The Solicitors' Journal
and Weekly Reporter.
(*ESTABLISHED IN* 1857.)
LONDON, MARCH 4, 1916.
ANNUAL SUBSCRIPTION, WHICH MUST BE PAID IN ADVANCE:
£1 6s.; by Post, £1 8s.; Foreign, £1 10s. 4d.
HALF-YEARLY AND QUARTERLY SUBSCRIPTIONS IN PROPORTION.

*** The Editor cannot undertake to return rejected contributions, and copies should be kept of all articles sent by writers who are not on the regular staff of the JOURNAL.
All letters intended for publication must be authenticated by the name of the writer.

GENERAL HEADINGS.

Cases Reported this Week.

Current Topics.

Retrenchment in the Law.

THE REPORT of the Committee on "Retrenchment in the Public Expenditure" has a short section dealing with the legal departments. It notes that these departments are covered generally by the report of the Civil Service Commission, which we recently examined at some length, and a further inquiry would serve no useful purpose. "The Treasury will, no doubt, carry out at the earliest possible date all the steps which have been suggested by the Royal Commission with a view to the reduction of expenditure." Perhaps, but reports of Royal Commissions are not always immediately fruitful.

The Long Vacation.

THE Civil Service Report did not, however, cover the whole field. The Judges were not within the purview of the inquiry, and it did not touch questions relating to the judicial system. Accordingly the Retrenchment Committee take up the tale at this point, and make the following suggestion:—

> It is, we believe, generally recognized that the Long Vacation ought to be curtailed—which would permit of a reduction of both the judicial and the administrative staff, apart from any reduction which may be possible even in present circumstances—and that the existing circuit system is extremely wasteful, both in time and money, owing mainly to the number of small and inconveniently situated assize towns.

But it is, of course, very doubtful whether any monetary saving is to be obtained by the curtailment of the Long Vacation, however desirable such a step may be on other grounds. It is also suggested that considerable savings might be effected by a reorganisation of the county court system, or, failing that, by a reduction in the number of small courts. But here, again, the committee are probably unaware of the practical difficulties in the way of effecting any real saving on this head.

Judges and Their Officers.

IT MAY be noticed, however, that the Committee do not speak at all definitely:—

> These are large questions on which we are not in a position to make any definite pronouncement, but we recommend that they should be carefully examined by the Treasury, in concert with the legal authorities, with a view to effecting the reforms proposed by the Royal Commission on Legal Delay so far as they have not been already carried out, and to securing all other possible economies with the least delay.

It is also suggested that Judges should no longer have the salaries of their officers—such as secretaries, clerks and marshals—paid for them (these aggregate over £16,000 per annum), and that the salaries of revising barristers (£25,000 a year) should be substantially reduced "so long as those posts continue to exist at all"—an unkind cut after the experience of the past year. But really we very much doubt whether any substantial reduction is to be found in the legal departments. After all, *Justitia fiat, ruat cœlum*.

Re-Entry for Non-Payment of Rent and the Courts (Emergency Powers) Act.

IN THE case of *Ness* v. *O'Neil* (*Weekly Notes*, 1916, p. 58) the Court of Appeal have decided that leave under the Courts (Emergency Powers) Act, 1914, is not required for issuing a writ to recover possession of premises under a claim for re-entry for non-payment of rent. Section 1 (1) (*b*) provides that leave shall be obtained to "exercise any right of re-entry" or foreclose, &c., "for the purpose of enforcing the payment or recovery of any sum of money to which this sub-section applies, or in default of the payment or recovery of any such sum of money." Now, a right of re-entry is regarded as a security for payment of rent, so that, if the right to recover the rent is suspended by a moratorium, so also is the right of entry (*Durell* v. *Gread*, 84 L. J. K. B. 130); but it is not clear that the right is exercised for the purpose of enforcing payment within the first branch of the clause just quoted. Clearly, however, it is exercised "in default of payment" within the second branch, and leave is required before a landlord actually re-enters for non-payment of rent, except rent at £50 or upwards per annum under a lease made after 4th August, 1914. But there remains the question whether, if he does not actually re-enter, but issues a writ to enforce his right of re-entry, he is "exercising" that right within the meaning of the section. In the analogous case of foreclosure it has, as is well known, been held that leave is not required before commencing foreclosure proceedings (*Re Farnol, &c., Co.*, 1915, 1 Ch. 22); nor is special leave required for final foreclosure; it is sufficient compliance with the Act that the Court has seisin of the matter, and that the final order is made by the Judge in person. And the same principle, it has now been held by the Court of Appeal, applies to the enforcement, through the medium of the Court, of a right of re-entry. The issue of the writ is not the enforcement of the right in a summary manner, and it is not within the prohibition of clause (*b*). The writ can be issued and the proceedings go on till judgment requires to be enforced by a writ of possession, and it is only at that stage that the tenant is entitled to the protection of the Act.

Negligence under Zeppelin Restrictions.

AT FIRST sight one is tempted to regard *Hewlett* v. *Great Central Railway Co.* (*Times*, 24th ult.) as a hard case; but on reflection it seems to have been rightly decided by DARLING, J. In front of the Great Central Station there are certain posts and gates forming a refuge in the street, and these were left unlighted—because of the police regulations against aircraft dangers—by the Borough Council, whose duty it is to light the streets, as successors of the vestry on whom that duty was cast by section 30 of the Metropolis Management Act. Now, the refuge in question is the property of the Great Central Railway. In 1901 the London County Council succeeded in an action for a declaration that the refuge was a public nuisance, which the owners had no right to maintain in the highway; but in 1902 express statutory authority was given the railway company, by section 31 of a Private Act, to maintain the posts and gates. In April of last year a taxi-cab driver ran into this refuge at night and suffered injury. He sued the company for damages. Two grounds of claim were open to him—namely, special damage caused by a public nuisance, and damage due to the negligence of the company in not taking care to indicate the danger. The former ground seems barred by the express statutory authority to commit the nuisance, which legalizes, not only the nuisance, but all its necessary consequences (*Vaughan* v. *Taff Vale Railway Co.*, 1860, 5 H. & N. 679). Of course, consequences which are unauthorized are not so excused (*Penny* v. *Wimbledon Urban Council*, 1899, 2 Q. B. 72). But it seems simpler to say that, as owners of the refuge, the company must take reasonable care to prevent their property causing danger to others; and if they take no steps to indicate the danger—*e.g.*, by white-washing the stones—there is sufficient evidence of negligence to go to a jury. Mr. Justice DARLING so held, and, despite a plea that police restrictions and Zeppelin dangers prevented the defendants from lighting the spot, a jury found for the plaintiff.

Wife's Authority to Pledge Husband's Credit.

THERE SEEMS to be ground for suggesting that ROWLATT, J., in his judgment in *Webster* v. *Webster* (*Times*, 2nd inst.), took too narrow a view of his jurisdiction to restrain illegality by injunction. A wife had left her husband because she found life at his country house too dull, but there was evidence to shew that he had accepted the situation and assented to a separation. She ran up bills to an extent which could certainly not be justified on any theory of a husband's liability to have his credit pledged for necessaries. To avoid the constant expense and annoyance of being dunned to pay these bills, her husband boldly applied for an injunction to restrain her from pledging his credit. The application failed, because Mr. Justice ROWLATT was of opinion that the alleged wrong committed by the wife sounded in tort, in which case section 12 of the Married Women's Property Act, 1882, deprives her husband of the right to sue her conferred by section 1 (2) of that Act; and he held that the action sounded in tort because such an action is one in *case* for damage to the defendant wilfully done by the plaintiff, *i.e.*, analogous to the class of legal wrongs of which *Quinn* v. *Leathem* (1901, A. C. 495) is now the stock example. But the matter seems to depend on agency, which is essentially a matter of contract. Suppose a wife wilfully pledges her husband's credit knowing that she has no authority to do so, it seems just possible a tradesman who failed to recover against the husband might sue her for breach of warranty of authority on the well-known principle laid down in *Collen* v. *Wright* (1857, 8 E. & B. 647). But the relation of the creditor to the wife is wholly different from that of the husband to his wife. *Prima facie* she is his agent with a limited authority to pledge his credit for household expenses and for personal necessaries. If she exceeds her authority, she is surely guilty of a breach of the implied contract of agency created in law between her husband and herself. If so, there is no reason in principle why an injunction should not lie to prevent a continuing breach of her contractual duty as an agent.

Deduction of Property Tax from Rent.

THE Income Tax Acts are ill-drafted and obscure, and this observation applies especially to the sections which relate to landlord's property tax. The Valuation of Property Act, 1869, enacts that the valuation list for the time being in force in any metropolitan parish shall be conclusive evidence of the gross value and rateable value of the hereditaments included therein for the purpose of any tax assessed in pursuance of the Income Tax Acts. Every valuation list is to be revised in every period of five years, and the gross or rateable value of any hereditaments comprised therein may be raised in consequence of such revisions. The Income Tax Act enacts that the landlord's or property tax under Schedule A is to be charged

on and paid by the occupier, but this must not be understood to mean that the landlord can throw the liability to pay it on the tenant. If the tenant pays it, rule 9 of the Schedule enacts that he shall deduct so much thereof in respect of the rent payable to the landlord for the time being as a rate of [sevenpence] for every twenty shillings thereof would by a just proportion amount to; and section 40 of the later Act of 1853 contains a wider provision that every person liable to the payment of any rent is entitled on making such payment to deduct the amount of the rate of duty which, at the time when such payment becomes due, shall be payable for every twenty shillings of such payment. Many tenants after reading these sections would like to pause and take breath, but would have a general idea that whenever the tenant pays the landlord's property tax he may get it back from the landlord, having a statutory lien on the rent. But certain lessees of houses in metropolitan parishes have recently made an unpleasant discovery. The rateable value of their houses has been raised in the new quinquennial valuation list above the amount of the rent reserved in their leases, and after paying the amount of their increased property tax they are informed that the deduction sections limit the deduction to duty in respect of the amount of rent actually paid by the tenant. Thus, if the annual value of a house be assessed for income tax purposes at £44, but owing to depreciation it is let at £40, the tenant, although he must pay on £44 (until he can get the assessment altered), can only deduct from his rent the tax on £40. He may not understand the phraseology of the Act, but he can understand that he is poorer than he imagined himself to be.

Stealing the Clothing of Young People.

Larceny is a well-known department of the criminal law, but its penalties are incurred in an infinite variety of cases, in some of which the offender is regarded with compassion, in others with indignation and contempt. In a recent case before the London Sessions a woman of mature age pleaded guilty to charges of stealing money from young children, who had been sent out by their parents to make small purchases. Her method was to waylay these children and send them upon some errand, offering to take care of their money till they returned. The offence of stealing clothing from the persons of young children, a remarkably mean and despicable offence, seems to have been well known in Scotland, further back than the last century. Professor David Hume, in his work on the law of Scotland respecting crimes, gives a rather quaint reason for the doctrine that the great value of the thing stolen is always an article of weight against the thief. The learned author tells us that, in taking so much more than he can be in any pressing want of, he forfeits any plea he might have on that ground, and shews a dangerous rapacity of temper, such as excludes in a great measure any hope of his amendment. But he goes on to say that in several late instances it has been thought right to punish with severity the theft of an article of very inconsiderable value, because it is taken from the person of an unprotected infant, the child of indigent parents. And he cites the case of Janet Irvine, who had sentence of transportation for life for stealing a tartan frock from the person of a chimney sweeper's child of three years old on a common stair in one of the Edinburgh closes. Such severity is not in accordance with the usages of the present day, but no one can regret that the culprit in the English case, who was proved to have been a "confirmed child robber," was sentenced to a long term of imprisonment.

The *Times* correspondent, in a message from Madras, of 22nd February, says:—Mr. Harding, District Judge of Trichinopoly, was fatally stabbed this afternoon while going to the Court. The assassin has been arrested. The *Times* adds this note:—The state of Southern India throughout the war has been satisfactory, and there is the less reason to regard the assassination of Mr. Harding as a disquieting symptom since he was an officer of amiable temperament and well known to be strongly sympathetic in respect to Indian advancement. Mr. Harding had seen nearly thirty years' service in the Madras Presidency, spent almost entirely in judicial work.

The Reform of the Supreme Court Rules.

It seems a good many years now since there was serious talk of the redrafting of the Supreme Court Rules. We are under the impression that at one time—say twenty years ago—it was thought that the work would be taken in hand, and that the rules would undergo reduction in number and simplification in form. But there has been little heard of this recently. We are glad, therefore, that the matter has been taken up by Master T. Willes Chitty in his lecture this week to the Solicitors' Managing Clerks' Association, an account of which we give in another column. We do not propose to consider in detail the suggestions which Master Chitty makes. He is himself, probably, the leading authority on the practice of the King's Bench Division, and no hasty discussion of his proposals would be of practical use. It is sufficient at present to call attention to the matter and express the hope that the lecture will lead to a definite effort at reform.

The compulsory summons for directions was well meant, and it was anticipated that it would have an important effect in giving the Court control of litigation from the outset. But this is a case in which there is much difference between theory and practice, and, as Master Chitty points out, the Court is powerless to exercise control when the advisers of the parties start with insufficient instructions. On the Chancery side it is, we believe, generally recognized that the summons is a mere form. The procedure under Order 14 has had a different result, and has, no doubt, been of real benefit to suitors; but it has from time to time shewn defects—due largely to over-technicality—which have caused a waste of money and have detracted from its utility. And Master Chitty had no difficulty in pointing out instances of inconsistency in the rules—those, for instance, dealing with the fixing of the place of trial—which are due to the failure to observe the effect of new rules upon the old ones.

In considering the relation between the High Court and the county courts, Master Chitty put on one side the question of amalgamation. His own views in favour of this step were very forcibly stated in his evidence before the King's Bench Commission of 1913 in a passage which we quoted at the time (57 Solicitors' Journal, p. 552). That is a matter for the future. For the present his proposals are on a lower plane. They are directed at actual inconveniences attending the removal of High Court cases to the county court.

But, as we have said, detailed examination of particular reforms would be out of place at present. It is more important to call attention to Master Chitty's proposals for the immediate revision of the rules and for keeping them in the future up to date; also for providing a means of settling points of practice as they arise, and so avoiding expense and inconvenience to litigants and their advisers. He drew a comparison between the County Court Rules and the Supreme Court Rules, not altogether to the advantage of the latter. The Supreme Court Rule Committee is august, but whether it is practical may be questioned. The County Court Rule Committee is practical, and the rules are considered with more regularity, and are from time to time overhauled and brought up to date. The Supreme Court Rules should be treated in the same way, but this would necessitate the inclusion in the committee of more persons with practical experience of procedure. As an alternative, Master Chitty suggests the establishment of a "Chamber Rule Committee," which would make rules for chambers and the Central Office; and, as a further step in securing uniformity of practice, the frequent changing of the Judge in Chambers should be avoided, or—and probably this would be the better plan—a permanent Practice Judge should be appointed. We hope that hereafter the whole of the lecture may be available in permanent form. The present time is not favourable to legal reform of any kind, but that which Master Chitty advocates is so conducive to the public welfare that it should be possible to secure for it a favourable hearing.

Military Service Exceptions.

Two points of difficulty and confusion under the Military Service Act, 1916, are illustrated by a case which came before the City Local Tribunal on Monday, and which is described in the *Times* report of Tuesday as an "important decision." Our contemporary also describes the result as "somewhat startling." An applicant for exemption had offered himself for enlistment in a Territorial regiment three times in all, and on each occasion had been rejected for defective vision. The third occasion was on 5th November last, and he claimed to be an excepted person, having been rejected for His Majesty's forces since 14th August, 1915. Now, obviously, a person so rejected is excepted from the Act by its own provisions, and does not require a certificate of exemption from a local tribunal; indeed, they have no jurisdiction to decide whether or not he is excepted, for under the statute that is the business of a civil court, not a military tribunal.

But the applicant has since then attested under the Derby Scheme; he did so in January, believing that he might be conscripted. As the military representative pointed out, quite correctly, such a man does not come within the provisions of the Military Service Act at all; therefore he is not entitled to the benefit of an exemption granted by the statute to unattested men rejected since 14th August last. As an attested man he has enlisted and been transferred to the Reserve, and it is under the Territorial and Reserve Forces Acts that he is liable to military service—namely, as an enlisted man. This seems quite clear, although if the man attested in consequence of the misleading War Office notice about re-examination of rejected men, he is morally entitled to the benefit of Mr. TENNANT'S promise that the General of his division will inquire into each such case and relieve rejected men who have so attested under pressure. The Local Tribunals, however, are not concerned with these cases. The application to the City Tribunal was, no doubt, based on a confusion between the tribunal's statutory jurisdiction under the Military Service Act over claims by conscripts and its non-statutory power to hear claims by attested men under the Derby Scheme.

But the other point raised by Major ROTHSCHILD, the military representative, is indeed startling. He claimed that rejection on attempted enlistment into the Territorials, although since the crucial date of 14th August, does not make the applicant a "rejected person" within the meaning of the Exception in the Schedule to the Military Service Act. The words of the Schedule are "men who . . . have offered themselves for enlistment and been rejected since the fourteenth day of August, 1915." There is nothing here which limits the offer to enlistment in the Regular Army. The Territorial Forces, since December, 1914, have not received any applicants for enlistment otherwise than for general service, so that an enlisted Territorial is in the same position as an enlisted Regular. An earlier exception in the Schedule groups together members of the Regular and Reserve Forces, and of the Territorial Forces who have undertaken foreign service liability. It would seem that Major ROTHSCHILD'S point was wholly mistaken, although not relevant to the decision in this particular case; but the fact that a military representative of his standing could seriously take it points out another difficulty which faces rejected men in getting their rights. The War Office should instruct recruiting officers throughout the country that they have no right to call up for service unattested men who have been duly rejected since 14th August, 1915, upon offering themselves for enlistment in the Territorial Forces, or any unit of these Forces. Incidentally, we may point out that aggrieved men who receive notices calling them up can, on the principle of *Dyson* v. *Attorney-General* (1911, 1 K. B. 410), obtain in the High Court a declaratory order as to their position, although the remarks of WARRINGTON, J., in *Burghes* v. *Attorney-General* (1911, 2 Ch. 139), seem to shew that they cannot get costs.

Magna Carta.*

(*Continued from page* 304.)

Professor Dicey, lecturing at Oxford on "The Law of the Constitution," has well remarked that, although the English Habeas Corpus Acts declare no principle and define no rights, they are for practical purposes worth a hundred constitutional articles guaranteeing individual liberty. As in England, so with us. Without the writ of Habeas Corpus there would be no liberty worthy of the name and no rights of personal freedom of any practical value. We have only to read the leading cases in our courts to realize how great a part the writ has played and still plays in securing and rendering effective the fundamental principles of American liberty.

Chapters twelve and fourteen of Magna Carta deal with the subject of taxation, and they laid the foundation of our representative system and of the separation of the legislative from the executive power. As has been suggested, the only legislative function that the people of England in the thirteenth century contemplated as closely affecting them or as likely to create any pressing grievance was that of taxation. It was, therefore, expressly provided in the Great Charter that, aside from the three existing feudal aids, more or less fixed, the power to impose taxes should not be exercised without the consent of the *commune consilium*. This common council is the body that fifty years later developed into the famous Parliament of Simon de Montfort of 1265.

In the controversies in regard to taxation subsequently arising, whether in Parliament, the courts, or the forum of public opinion, it was always insisted that Magna Carta prevented taxation without the consent of Parliament, just as in the eighteenth century our ancestors contended that Magna Carta prevented taxation without representation, that is, prevented the imposition of taxes except by a legislative body in which the taxpayers were represented. We have only to refer to the arguments in the great constitutional cases before the courts of England in the seventeenth century, such as the famous Case of Impositions in the reign of James I., and the still more famous Case of Ship-Money in the reign of Charles I., to realize how much the people relied upon Magna Carta as establishing the doctrine that Parliament alone could impose taxes.

The counsel for Bate in the former case and for Hampden in the latter case may not have conceived the philosophical theory of the separation of governmental powers elaborated by Montesquieu in the next century, and they may not have argued that taxation was essentially a legislative function and could not, therefore, be exercised by the King; but in final analysis their arguments were the equivalent of these when they asserted that Parliament alone could impose taxes. The judgment of a majority of the Court in the Ship-Money Case, as had been the judgment in the Case of Impositions, was in favour of the Crown, but the appeal to the country cost Charles I. his head, and resulted ultimately in vesting in Parliament the exclusive power to legislate and hence to tax. If England had then had an independent judiciary charged with the duty of enforcing the fundamental law of the land, the taxes in both of these cases would have been held contrary to the letter, as they were certainly contrary to the spirit, of Magna Carta.

It is no answer to say that the Parliament of to-day finds its prototype not in the old common council referred to in Magna Carta, but in the Parliament of 1265, nor is it an answer to say that the idea of taxation in its abstract form is essentially modern and was quite unknown in 1215. I do not suggest that the people of England in 1215, or even in 1265, understood the virtues of the representative system, or the principles of taxation or of the separation of powers. The point is that the direct consequence of the provisions of Magna Carta was a Parliament based theoretically at least on the representative idea as well as on the principle that there could be no legislation without the consent of Parliament.

The most famous of all the chapters of the Magna Carta, and the most important and far-reaching from a juridical point of view, is undoubtedly the thirty-ninth, which provides that "No freeman shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land."

The substance of this provision as to "the law of the land," or its equivalent "due process of law," is of universal application throughout the United States as a constitutional limitation upon the powers of government, and it is to be found not only in the Federal Constitution but in the constitution of nearly every state of the Union. It is now firmly established in American and

* Address before the Constitutional Convention of the State of New York at the Celebration of the Seven-hundredth Anniversary of Magna Carta, 15th June, 1915, by WILLIAM D. GUTHRIE, Ruggles Professor of Constitutional Law in Columbia University Law School.

English constitutional law, and is familiar knowledge, that the terms "the law of the land" and "due process of law" are exactly equivalent in meaning and legal force and effect. The earliest use of the phrase "due process of law" in American constitutions seems to have been in the Fifth Amendment to the Constitution of the United States, ratified in 1791. None of the state constitutions then in existence contained that term, but nearly all of them used the phrase "the law of the land."

Until recent years, it had been assumed that the term "the lawful judgment of his peers" in Magna Carta meant trial by jury according to the modern understanding of that term, and that the term "the law of the land" meant laws conforming to those fundamental principles of justice which protect every individual in the full enjoyment of life, liberty and property secure from the arbitrary exercise of the powers of government. That is still the technical legal meaning of these two terms, both in England and in America, although their practical effect and operation are different with us, because of our system of written constitutions which the legislative branch may not disregard or violate. Both of these meanings, however, are now challenged as without foundation in either the provisions or the history of the Great Charter.

Some historians contend that Magna Carta could not have meant trial by a jury of twelve and a unanimous verdict, because such a jury, according to our present knowledge, did not exist until the second half of the fourteenth century. But it is quite immaterial whether the exact form of our jury trial existed in England in 1215, or when the Great Charter was subsequently reissued or confirmed, provided that the foundations of that system had then been laid. Is it not sufficient for us that the antecedents of the modern jury system in all its three forms of grand jury, criminal jury and civil jury existed at the time of Magna Carta and were preserved by it? As the jury system developed, with the changes inevitably attending all such institutions of legal procedure and machinery, the form for the time being, whatever its exact nature, became "the lawful judgment of his peers" within the intent and meaning of the Great Charter. In any event the latest confirmations of that instrument were at a time when the jury system as now in force was being firmly established. It is, therefore, easy to understand how the provision "the lawful judgment of his peers" came to be regarded as intended to guarantee the common law jury of twelve with unanimity in verdict.

Thus, many, if not most, of our constitutional provisions now apply to conditions not at all contemplated by their framers, although clearly within the principle enunciated and the spirit of the language used. Much of the efficacy of our federal and state bills of rights, or of any similar provisions which this Convention may embody in the new constitution, would be practically nullified if the language used were to be interpreted as being limited to the particular conditions existing when they were adopted. It is the spirit and expanding principles of constitutional provisions that always control. The letter killeth.

A charter of liberties, a bill of rights, or a constitution is not an ephemeral enactment designed to meet only the conditions existing at the time of its adoption. It embodies and perpetuates permanent principles. It is designed to endure "forever," in the language of Magna Carta, and "to approach immortality as nearly as human institutions can approach it," in the lofty phrase of the great Chief Justice of the United States. Under any other rule of interpretation, Magna Carta would have become antiquated long before the discovery of America.

By the phrase "the law of the land," in chapter thirty-nine, the fundamental principles and axioms of the existing law were perpetuated. Exactly what those fundamental principles and axioms were then understood to be is not now capable of accurate exposition. The judges and people of those days certainly had some definite ideas of reasonably just and fixed rules of conduct adequate for the solution of the simple questions arising in the controversies then being submitted for adjudication. Had the judges been pressed for a comprehensive or philosophical definition of "the law of the land," they might have said that they would not attempt to define the term any more than they would attempt to define justice itself, and that, as the Supreme Court of the United States declared only a few years ago, it was better to ascertain the intent of such an important phrase in a great constitutional document by the gradual process of judicial inclusion and exclusion as practical experience might dictate and the cases presented for decision might require; in other words, that their decisions would in time sufficiently declare and perpetuate the principles of the law of

> "A land of settled government,
> A land of just and old renown,
> Where freedom slowly broadens down
> From precedent to precedent."

(*To be concluded.*)

Reviews.

Books of the Week.

International Law.—The Grotius Society. Problems of the War. Papers Read Before the Society in the Year 1915. Vol. I. Sweet & Maxwell. 5s. net.

International Law.—Wheaton's Elements of International Law. Fifth English Edition. Revised Throughout, Considerably Enlarged, and Re-written. By Coleman Phillipson, M.A., LL.D., Litt.D., Barrister-at-Law. With an Introduction by Sir Frederick Pollock, Bt., D.C.L., LL D. Stevens & Sons (Limited). 35s.

Correspondence.

Executors and Income Tax

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—The following facts may be of interest and perhaps lead to some reader being able to assist us with judicial authority on the point involved.

A client of ours was appointed sole executor of an old lady who died on 30th October, 1914. Shortly prior to her death the deceased had been paid by one of the insurance companies a year's annuity due to her, income tax having been deducted, but, as the Commissioners now assert, at an insufficient rate.

The executor, after the usual statutory advertisements for claims had been inserted, and the duties and all known debts paid, completed the administration by paying the legacies and handing over the balance to the residuary legatee, who was a nephew of the testator, resident in Canada.

In November, 1915, the Income Tax Commissioners sent in a claim for the amount they allege the insurance company had failed to deduct from the last payment of the annuity, and assert that the executor is personally liable to pay this amount to the Crown.

Our client did not receive the annuity, and could have had no notice of the rate at which income tax was deducted therefrom. He did all that was possible to obtain and pay all debts by advertising in accordance with 22 & 23 Vict. c. 35, s. 29, and as we have pointed out to the Income Tax Commissioners on the authority of *Clegg* v. *Rowland* (L. R. 3 Eq., p. 368), he is in the same position as if he had administered under a decree of the Court. The only answer we can get (without any authority in support) from the Commissioners is that "the Crown's claim is not affected by the considerations referred to," and our client is placed in the position of having to pay out of his own pocket, or embark upon an expensive fight in the Law Courts, in which he would probably be taken to the House of Lords if he was successful.

In this case the amount involved is comparatively small, but if the contention of the Crown is correct the same thing might happen over every dividend paid by a joint stock company for three years before the administration of any estate is complete, and the amount might be very considerable in these days when there is the greatest uncertainty as to what is the proper deduction in many cases.

If any of your readers can throw light on the question involved with the Crown under the circumstances we have detailed we should be much indebted to them.

Maddison, Stirling, & Humm.

33, Old Jewry, London, E.C., Feb. 25.

Metropolitan (1914) Special Constabulary.

"E" Division.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—May I appeal through your columns to men over military age and others who are unable to serve in the combatant forces and are able and willing to spare four hours, night or day (of whom the number must be large), to help us to carry on the work we have been doing since the commencement of the war?

As special constables we have been able to help in many ways that wonderful body of men which has always been the envy of foreign nations—the Metropolitan Police—whose ranks have been sorely depleted and, were it not for us, might not be able to obtain their day's rest once a week.

It is up to the public to come forward now and take the place of men who have joined the forces, and enable us to preserve the record of efficiency of which we may be justly proud.

Commander, "E" Division Special Constabulary.

24, Endell-street, Bow-street, W.C., Feb. 28.

Solicitors and Exemption from Military Service.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—Referring to the inquiry contained in "Solicitor's" letter in your last issue as to whether solicitors are exempt from Military Service in this country, to which your editorial note is, "We think not," may I refer you to page 240 of the 3rd edition of Cordery on Solicitors, from which the following is an extract:—

> "Solicitors are exempted from any personal service that might interfere with their official duties, such as, *inter alia*, from service in the militia (see *Venable's case*, Cro. Car. 11), but not so under an Act which allowed a commutation of service by payment (*Gerard's case*, 2 W. Bl. 1123)." R. J. L. BRENNAN.

86, Week-street, Maidstone, Feb. 28.

[The inquiry was as to service in most countries, which we understood to mean countries abroad where service is compulsory; and we think there is no doubt that lawyers have no exemption, though, where they hold official positions, provision is made for the appointment of substitutes: see, as to France, 59 SOLICITORS' JOURNAL, pp. 202, 203. Mr. Brennan's reference is interesting, but not, perhaps, now applicable.—ED. *S.J.*]

Increase of Rent, &c., Act, 1915.

[*To the Editor of the Solicitors' Journal and Weekly Reporter.*]

Sir,—Section 2 (4) provides that this Act shall not apply:—

> (*a*) To any mortgage comprising one or more dwelling-houses to which this Act applies and other *land* if the rateable value of such dwelling-houses is less than one-tenth of the rateable value of the whole of the *land* comprised in the mortgage.

What is meant by *land* in this section? By the Interpretation Act, 1889, s. 3, "land" in an Act of Parliament shall include "messuages . . . houses and buildings of any tenure" unless a contrary intention appears.

Am I right in assuming and advising that land in the above Act includes dwelling-houses, shops, offices and other buildings, and therefore that if there are two or three dwelling-houses to which the Act applies in a security comprising a number of dwelling-houses, shops and offices to which it does not, if the former are less than one-tenth of the rateable value of the whole of the houses, shops, &c., comprised in the security, the Act will not apply?

G. H. BLACKBURN.

5, Bank-street, Bradford, Feb. 28.

[We are afraid this question is easier to ask than to answer, and if we wait a week some correspondent may assist us.—ED. *S.J.*]

CASES OF THE WEEK.

House of Lords.

J. & P. HUTCHINSON *v.* McKINNON. 29th November; 2nd February

WORKMEN'S COMPENSATION—INJURY BY ACCIDENT—DRINKING WATER PROVIDED ON SHIP FOR USE OF SEAMEN—SEAMAN DRINKING WATER FROM CAN BELONGING TO ANOTHER SEAMAN CONTAINING A SOLUTION OF CAUSTIC SODA—EVIDENCE THAT WATER WAS COMMONLY PUT IN CANS BY CREW TO GET COOL—EVIDENCE FAILING TO SUPPORT FINDING THAT ACCIDENT AROSE "OUT OF" SEAMAN'S EMPLOYMENT—WORKMEN'S COMPENSATION ACT, 1906 (6 ED. 7, C. 58), S. 1.

A steamer belonging to the appellants was lying in Spezzia Harbour. The weather was very hot. The crew were in the habit of getting their drinking water from the tank and putting it to cool in cans in various parts of the ship. McKinnon was one of the seamen on board, and by mistake he drank from a tin containing a solution of caustic soda, believing it contained drinking water which a mate had put out to cool. In consequence he was seriously injured. The Sheriff Substitute awarded him compensation, and the Judges of the Second Division of the Court of Session affirmed his award.

Held, after consideration, that there was no evidence to support the award so far as it was found that the accident arose "out of" the employment.

Decision of Court of Session (1915, *Sc. L. R.* 22) *reversed.*

Appeal by the employers, shipowners of Glasgow, from an interlocutor of the Judges of the Second Division of the Court of Session, which affirmed an award of the Sheriff Substitute of Lanarkshire in arbitration proceedings between the respondent and the appellants under the Workmen's Compensation Act, 1906. In August, 1913, *The Fastnet*, a steamer belonging to the appellants, was lying in Spezzia Harbour. The respondent, Michael McKinnon, who was one of the crew, by mistake drank from a tin, which he thought contained drinking water, a solution of caustic soda, which the boatswain had put into the tin for the purpose of cleaning it, and was very seriously injured. There was evidence that the drinking water aboard, when pumped up, was tepid, and the crew were in the habit of putting in any cool part of the ship their cans of drinking water to get cold before they were likely to require to drink it. The appellants did not dispute that the accident arose "in the course of" the man's employment, but they said there was no evidence on which it properly could be held to arise "out of" his employment. The case having been fully argued, judgment was reserved.

Lord BUCKMASTER, C., in moving that the appeal should be allowed, said he could not help regretting that the facts in this case had not been found in a more detailed and decisive form, as he was unable to find that they justified the assumption upon which the judgment of the Judges of the Second Division was based. In the case stated by the Sheriff Substitute nothing was mentioned as to the character of the tins nor as to their ownership, nor, again, as to the place where it was customary to deposit them in order to secure that the water should be properly cooled. Lord Guthrie, however, came to the conclusion that the following facts were found by the arbitrator: (1) that the can in question was standing in the usual place where cans were put to cool; (2) that the seaman did not know that the can he drank from belonged to another man; (3) that all the cans were identical or similar in appearance. And, if those assumptions were justified, he should not differ from the conclusion at which Lord Guthrie had arrived. But from the findings in the award itself it merely appeared that it was the practice of the crew, known to and sanctioned by the officers, to cool their drinking water, after drawing it from the pump, by placing it in cans in a shady part of the ship, and that the respondent drank from a can which was not his own, nor found either to resemble his own or to have been mistaken for it. It might have been a reasonable course which the men took to render the water more palatable, and equally reasonable for the officers to raise no objection to its being pursued; but this could not enable a man to assume, at the risk of his employers, that a can which was not his own, and not shewn to resemble those in general use, was containing water set out to cool in the ordinary way. For these reasons he thought the judgment appealed from should be reversed.

Lord SHAW, while concurring, admitted he felt the same difficulty about this case. He pointed out that it was open to the Judges of the Second Division to have sent the case back for the Sheriff-Substitute to have found further facts. As it was, no amendment or addition having been ordered, the facts must be taken exactly as they were found in the stated case. Any other version of the facts was illegitimate: if such a version was proceeded upon the decision might proceed upon a grave and fundamental error.

Lords ATKINSON, PARKER and SUMNER were also in favour of allowing the appeal.—COUNSEL, for the appellants, *Horne*, K.C., and *Neilson*; for the respondent, *T. M. Healy*, K.C., and *Thomas Scanlan*. SOLICITORS, *Holman, Birdwood, & Co.*; *Herbert Z. Deane.*

[Reported by ERSKINE REID, Barrister-at-Law.]

Court of Appeal.

HORLICK'S MALTED MILK CO. *v.* SUMMERSKILL. No. 1.
14th and 15th February.

"PASSING-OFF"—SALE OF PROPRIETARY ARTICLE UNDER DESCRIPTIVE TITLE—DESCRIPTION SCIENTIFICALLY INACCURATE—"MALTED MILK"—SALE OF RIVAL ARTICLE UNDER SIMILAR NAME—NO MONOPOLY IN DESCRIPTIVE WORDS.

A firm had for many years advertised and sold a food preparation under the name of "Horlick's malted milk," and had recently commenced to manufacture it in England. During this time no other "malted milk" was on the market, and there was evidence that it was often asked for and supplied without the plaintiff's name being mentioned. The defendant having advertised a somewhat similar preparation under the name "Hedley's malted milk."

Held, in a passing-off action, that the expression "malted milk" was not a fancy name distinctive of the plaintiff's goods, but was sufficiently accurate to be descriptive, and therefore "publici juris."

Appeal by the plaintiffs from a decision of Joyce, J., dismissing an action for passing-off. The plaintiffs were an American company incorporated under the laws of the State of Wisconsin, U.S.A., and they had there manufactured and sold a food preparation under the name of "Horlick's malted milk" for some twenty-five years. Having introduced and largely sold the product in Great Britain, in 1910 they established large works at Slough in order to manufacture it for the English market. The product was a mixture of desiccated milk and dried malt in the form of a white powder. In the United States there were other products sold as "malted milk" upon the market, and it was admitted that the expression was there *publici juris*. The defendant, a physician, had recently commenced to make and sell a somewhat similar preparation under the name "Hedley's malted milk"—Hedley being his wife's name. Until this article was on the market the plaintiffs had a virtual monopoly in this country of the use of the words "malted milk," having no competition, except that there were firms selling "malted milk biscuits" and "malted milk toffee," articles not dealt in by the plaintiffs. There was evidence that members of the public frequently asked for "malted milk" in shops without giving the name of the makers, and were invariably supplied with Horlick's, there being no other. The plaintiffs claimed that the words "malted milk" were not a scientifically accurate description of their goods, but were a fancy

name which had by long use become distinctive of them, and that they were therefore entitled to prevent any other person using them. They contended also that they were inapplicable to the defendant's preparation, which was different in many respects. Joyce, J., held that the words were descriptive, and dismissed the action. The plaintiffs appealed.

THE COURT dismissed the appeal.

Lord COZENS-HARDY, M.R., having stated the facts, proceeded: In the advertisements issued by the plaintiffs, they pointed out the differences between Horlick's and other brands of malted milk. There was no secret proprietary process, anyone could make the product. No doubt the plaintiffs had a very large trade, and until recently they had, in fact, a monopoly in the use of the words "malted milk" in this country, for no one else made it for sale. The question was whether the plaintiffs, by virtue of that monopoly, had the right to prevent any other person from selling a similar preparation under the name of "Hedley's malted milk." It was for the Court to say what was the meaning of the expression "malted milk." They had been told that only cereals could properly be spoken of as malted. The Court thought, however, that "malted" was an ordinary English adjective, and "malted milk" meant milk to which malt had been added—an addition which both sides agreed resulted in some chemical action. If "malted" was a descriptive word, then the plaintiffs were out of court. His lordship then referred to the judgment of Lord Davey in the *Cellular Clothing case* (1899, A. C. 326, at p. 344). The fact that the plaintiff company had been the only company making and selling "malted milk" did not carry them far enough. It was impossible for a trader to get any monopoly of a single word or expression for himself. The case presented no analogy to the *Yorkshire Relish case*. The appeal would be dismissed.

PHILLIMORE and WARRINGTON, L.JJ., delivered judgment to the same effect, the latter observing that the plaintiffs' case failed for the reason that the expression used properly described the preparation sold both by the plaintiffs and the defendant.—COUNSEL, *Walter*, K.C., *Sebastian*, and *Whitehead; D. M. Kerly*, K.C., and *J. M. Gover*. SOLICITORS, *Alpe & Ward; Mills & Morley*.

[Reported by H. LANGFORD LEWIS, Barrister-at-Law.]

MERSEY DOCKS AND HARBOUR BOARD *v.* BIRKENHEAD CORPORATION. No. 2. 27th January.

RATING—GRAVING DOCKS—PARTIAL EXEMPTION—"LAND COVERED WITH WATER"—PUBLIC HEALTH ACT, 1875 (38 & 39 VICT. c. 55), s. 211 (1) (b).

Held, that the graving docks in question, which had direct access through gates to adjoining wet docks, of which they formed a part, and were used for examination and repair of ships below the water-line, which were floated into them, and when repaired were floated out again, were not "land covered with water," and were therefore assessable at their full net annual value, but that the entrances were "land covered with water," and were assessable at one-quarter of such value.

Decision of Scrutton, J. (1915, 2 *K. B.* 312, 13 *L. G. R.* 764, 84 *L. J. K. B.* 1207), *affirmed.*

Appeal by the Mersey Docks and Harbour Board from a judgment of Scrutton, J., on a special case stated by an arbitrator. In arbitration proceedings as to the valuation of the dock estate of the Mersey Docks and Harbour Board at Birkenhead for the purpose of assessment, the question arose as to whether certain graving docks owned and occupied by the board were entitled to the benefit of a reduction in assessment of rates under section 211 (1) (b) of the Public Health Act, 1875, as being "land covered with water." Scrutton, J., held that the docks were not "land covered with water," and were therefore assessable at their full net annual value, but that the entrances were "land covered with water," and were assessable at the reduced amount. The Harbour Board appealed. Without hearing counsel for the respondents,

SWINFEN EADY, L.J., said that Blackburn, J., had stated in *East London Waterworks Co.* v. *Leyton Sewer Authority* (L. R. 6 Q. B. D. 669, at p. 673) that the question was one of degree, and he himself thought that it was not essential that the land, in order to come within the partial exemption, should be always covered with water. In the present case he was satisfied that the land on which the dry docks were constructed was not "land covered with water." He referred to *Smith's Dock Co.* v. *Tynemouth Corporation* (1908, 1 K. B. 948), where Lord Alverstone, at p. 956, considered the construction to be put upon section 211 (1) (b), and said he agreed that the partial exemption applied to the case where water was usually over the land, and not to the case where the presence of water was only occasionally essential to the use of the land. It was a question of degree in each case, and there might be cases near the line, but he did not think the present case admitted of any doubt. The appeal failed.

PICKFORD and BANKES, L.JJ., gave judgment to a like effect. Appeal dismissed with costs.—COUNSEL, for the appellants, *Macmorran*, K.C., *Maurice Hill*, K.C., and *W. J. Lias*; for the respondents, *Ryde*, K.C., and *A. H. Maxwell*. SOLICITORS, *Rawle, Johnstone, & Co.*, for *W. C. Thorne*, Liverpool; *F. Venn & Co.*, for *J. Fearnley*, Town Clerk, Birkenhead.

[Reported by ERSKINE REID, Barrister-at-Law.]

High Court—Chancery Division.

DICK *v.* NORTON. Eve, J. 11th February.

LANDLORD AND TENANT—SPORTING RIGHTS—COVENANT FOR QUIET ENJOYMENT—RIGHT OF LANDLORD TO CUT DOWN TREES—DISTURBANCE OF GAME—INJUNCTION.

A landlord who has granted a lease of sporting rights over a wooded estate is not thereby prevented from turning the property to the best purpose for which it is suited, even though there is a covenant for quiet enjoyment in the lease. Accordingly, the landlord in such a case will not be restrained by injunction from felling and selling timber on the property.

Jeffryes *v.* Evans (19 *C. B. N. S.* 264) *and* Gearns *v.* Baker (*L. R.* 10 *Ch.* 355) *followed.*

This was a motion by the plaintiff for an interim injunction to restrain the defendant from felling or cutting down, otherwise than was consistent with the non-disturbance of game and in a due course of estate management, the timber and other trees forming the woods and plantations of a sporting estate, or from otherwise interfering with the plaintiff in the quiet enjoyment of his sporting rights. By a lease dated 16th June, 1914, the defendant granted to the plaintiff the exclusive right of shooting and carrying away all manner of game over two farms in Montgomeryshire for the term of five years at a yearly rent of £25. Amongst other covenants the tenant covenanted by clause 6 to permit the landlord to enter the coverts at any reasonable time consistent with the non-disturbance of the game for the purpose of thinning the plantations, felling trees, or any necessary forester's work, and the landlord covenanted for quiet enjoyment. Recently the landlord gave notice to the tenant that he had sold the timber in certain of the woods included in the sporting lease, and that felling would commence on 2nd February, 1916. The trees were sold for £2,500, and were to be used partly for pit props, but mainly for munition work in South Wales. The plaintiff contended that the felling of the timber in these woods would result in the loss of the game on that part of the estate, and he relied on *Pattison* v. *Guilford* (L. R. 18 Eq. 259). The defendant contended that the lease of 16th June, 1914, did not restrict or affect his right to fell the trees, and alleged that owing to the neglected condition of the woods and the great demand at the present time for timber, it was in accordance with good estate management to cut down the trees. He relied upon *Jeffryes* v. *Evans* (19 C. B. N. S. 264) and *Gearns* v. *Baker* (L. R. 10 Ch. 355).

EVE, J.—No doubt the felling of timber would be likely to interfere with the sport of the shooting tenant and the amenities of the property leased, and no doubt the woods were originally planted with a view to the preservation of game, but in my view this case is covered by the decisions in *Jeffryes* v. *Evans* (*ubi supra*) and *Gearns* v. *Baker* (*ubi supra*). The demise of a right of shooting even when it contained an express covenant for quiet enjoyment did not prevent the lessor from turning his property to the best advantage for which it was suited. It has been suggested that clause 6 of the lease created an implied covenant not to enter the coverts at such times as would interfere with the preservation of game. I do not so read the clause, but even if I were to put a different construction upon it, I do not think that I should be justified in granting an injunction in the circumstances of this case. There is here a good sale to a purchaser who has entered into contracts to resell the timber to munition works and collieries, and it would be most difficult to estimate the damage to the defendant if an injunction were granted. I sympathise with the plaintiff in the interference with his shooting, but the plaintiff's loss can probably be much more easily ascertained than the defendant's. I must therefore refuse to grant the injunction asked for, the costs of the motion to be costs in the action.—COUNSEL, *Clayton*, K.C., and *J. H. Redman; Farwell*. SOLICITORS, *Gibson & Weldon*, for *Martin Woosnam*, Newtown; *Thomas Priest & Co.*, for *G. H. Morgan*, Shrewsbury.

[Reported by S. E. WILLIAMS, Barrister-at-Law.]

***Re* STAPLES. OWEN *v.* OWEN.** Sargant, J. 15th February.

PRACTICE—ORIGINATING SUMMONS—FUTURE RIGHTS—PRESENT DECISION AS TO—SCOPE OF RULE—R.S.C., 1883, ORD. 25, R. 5, AND ORD. 54A.

A declaration as to future rights should not, as a rule, be made where all the parties interested are not ascertained. The rule laid down by Jessel, M.R., *in* Curtis *v.* Sheffield (1882, 21 *Ch. D.* 1) *is still generally applicable.*

The case of Guarantee Trust Co. of New York *v.* Hannay & Co. (1915, 2 *K. B.* 536) *only validated ord.* 25, *r.* 5, *as to the jurisdiction of the Court to make binding declarations of right, although no consequential relief was claimed.*

Order 54*a only deals with procedure, and does not enlarge the jurisdiction of the Court as defined by* The Guarantee Trust Co. of New York *v.* Hannay & Co. (ubi supra).

This was an originating summons to determine whether, under the devise in the will of the testator of certain houses in remainder after the death of his widow and one Mary Ann Owen, in favour of the children and issue of Mary Ann Owen, her children, who were, or might be, entitled to share in the devised premises, were respectively

so entitled for estates in tail as tenants in common in equal shares, and, if not, what class or classes of persons were, or would, on Mary Ann Owen's death, be entitled to the devised property, and for what estates and interests. There was a similar gift to one Thomas Staples, and a similar question was asked with regard to the estates and interests of his children. The facts were these. By his will, dated 10th October, 1882, Thomas Staples gave to his wife all property which he might die possessed of, or entitled to, for her life. He then gave five freehold houses to his daughter, Mary Ann Owen, for her life, "and after her death to her children and their issue *per stirpes*, and not *per capita*, in equal shares as tenants in common." He then gave three other houses to his son, Thomas Staples, for his life, and after his death there was a similar gift to the above. The testator died in 1882, and his widow died in 1884. Mary Ann Owen had five children, the youngest of whom was born in 1872. Thomas Staples had two children, born in 1882 and 1884 respectively, one of whom had one son, born in 1915, and the other two sons, born respectively in 1909 and 1914. The summons was taken out by the two children of Thomas Staples and two of the children of Mary Ann Owen against Mary Ann Owen, Thomas Staples, and three infant grandchildren. It was contended that the Court ought to decide the question, although it related to future rights.

SARGANT, J., after stating the facts, said: In this case I am asked to decide the questions raised while the interests of the children and issue are in remainder, and, in my judgment, I ought not to do so. The general rule of practice as to making declarations as to future rights, laid down by Jessel, M.R., in *Curtis* v. *Sheffield* (1882, 21 Ch. D. 1), is generally applicable at the present time. The validity of ord. 25, r. 5, as to making binding declarations of right, although no consequential relief is, or can be, claimed, is established by the case of *Guarantee Trust Co. of New York* v. *Hannay & Co.* (1915, 2 K. B. 536), which also decided that the Court can make declarations at a plaintiff's instance, although at the time he has no cause of action, and, apparently, that, whether a declaration ought, or ought not, to be made in such a case, is a matter in the Court's discretion. I have no doubt as to the jurisdiction to declare as to future rights when all parties are present. But *Curtis* v. *Sheffield* (*ubi supra*) seems to shew that such a declaration should not, as a rule, be made where all the parties interested are not ascertained, although there are some cases in which the Court must give decisions affecting the rights of persons not parties to the proceedings, for instance, under the Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), and section 5 of the Conveyancing Act, 1881 (44 & 45 Vict. c. 41), even where the rights in future of unborn children are affected: see the case of *Re Freme's Contract* (1895, 2 Ch. 256 and 778). The circumstances here do not lead me to the conclusion that questions as to the future rights of children and issue ought to be decided. If, however, the children, with the consents of the protectors, executed disentailing assurances, and came with the tenants-for-life claiming the purchase moneys, as in the case of *Cardigan* v. *Curzon Howe* (1901, 2 Ch. 479), the Court might be forced to decide the questions of construction. Order 54a only deals with procedure, and does not enlarge the jurisdiction as defined in *Guarantee Trust Co. of New York* v. *Hannay & Co.* The summons must accordingly stand over, with leave to add parties and amend generally.—COUNSEL, *J. M. Gover; Bethell; Wilfrid M. Hunt; Meyrick Beebee.* SOLICITORS, *Jaques & Co.*, for *W. Thornton Jones*, Bangor.

[Reported by L. M. MAY, Barrister-at-Law.]

Re STILLWELL. BRODRICK v. STILLWELL. Sargant, J. 1st February.

HUSBAND AND WIFE—ALIMONY—JUDICIAL SEPARATION OF HUSBAND AND WIFE—ARREARS DUE AT HUSBAND'S DEATH—HUSBAND'S ESTATE SOLVENT—DEBTORS ACT, 1869 (32 & 33 VICT. C. 62), S. 5—BANKRUPTCY ACT, 1883 (46 & 47 VICT. C. 52), S. 37.

Where a husband's estate is not insolvent it is liable for arrears of alimony due under an order made in the Divorce Division.

Although future payments are not a "debt or liability" within section 37 of the Bankruptcy Act, 1883, and are not provable in bankruptcy, arrears of such payments constitute a debt enforceable under section 5 of the Debtors Act, 1869, by attachment of the husband, and the arm of justice is not so short that a court of equity must leave the wife without remedy merely because the husband dies.

The cases of arrears under a bastardy order only deal with a particular statutory provision, and are decided in accordance with the principle of the procedure under the Bastardy Acts, and have no application to cases of arrears of alimony which were held in very ancient times by the old Ecclesiastical Courts to be a judicial assessment of the husband's liability to the wife.

Re Harrington (1908, 2 *Ch.* 687) *not applicable.*

This case raised a wholly novel point as to whether a wife could enforce in a court of equity her claim for arrears of alimony against her deceased husband's estate. The Probate Court had made the order in proceedings for judicial separation, and the husband had got into arrears with his payments, and had died making no provisions by his will for his wife. The executor raised the point by summons as to whether he was entitled to pay the arrears. Numerous cases were cited, including *Linton* v. *Linton* (15 Q. B. D. 239); *Re Hawkins, Ex parte Hawkins* (1894, 1 Q. B. 25), which decided that the arrears of alimony could not be proved for by the wife in the bankruptcy of her husband. It was pointed out that this was because the Probate Court still had jurisdiction to alter the order as to alimony: *Prescott* v. *Prescott* (20 L. T. N. S. 331), *Re Robinson* (27 Ch. D. 114), where the wife tried unsuccessfully to assign an annuity originally in the nature of alimony, but subsequently set aside for her by the Lunacy Court in the lunacy of her husband. *Kerr* v. *Kerr* (1897, 2 Q. B. 439), *Bailey* v. *Bailey* 13 Q. B. D. 855), and *Robins* v. *Robins* (1907, 2 K. B. 13) shew that no action will lie in the King's Bench Division for arrears of alimony, because the order of the Probate Division for alimony is not a final and conclusive order, but is liable to revision by the Probate Court, and many other cases.

SARGANT, J., after stating the facts, said: On the face of the order in this case it would seem that the husband's estate would be liable just as he was in his lifetime, but possibly only in a different manner. However, it has been contended before me that under such an order as this there is no debt enforceable at law, but only by attachment under the Debtors Act, 1869, a remedy no longer available in this case, and that therefore the widow is wholly without remedy. If this is the case it is a most startling result, and every wife who had obtained an order for alimony against her husband, and whose husband had predeceased her, would lose all arrears due to her at his death. I am not going to lay down such a proposition of law unless forced to do so by the decided cases. Many cases have been cited to me which shew that alimony is a judicial assessment of the husband's obligation to his wife; that it is inalienable; that it is not got rid of by the husband's bankruptcy; or by assignment; or even by agreement between the parties. The Court has recognized that it cannot be sued for at law in the husband's lifetime because it is still subject to the jurisdiction of the Divorce Court, and such Court would have power to alter the order not only as to future payments, but also as to payments in arrear. But because during the husband's lifetime the Court which has to deal with the order is the Divorce Court, that is, in my opinion, no reason for holding that arrears cannot be a debt after the jurisdiction of that Court has come to an end. After the husband's death the jurisdiction of the Probate Court is at an end, and even his executors cannot apply to that Court in respect of divorce matters. In the case of *Linton* v. *Linton* (15 Q. B. D. 239) the Court of Appeal decided that although future payments of alimony were not a "debt or liability" within section 37 of the Bankruptcy Act, 1883, and were not provable in bankruptcy, arrears of such payments constituted a debt enforceable under section 5 of the Debtors Act, 1869. The remedy by attachment is gone because of the husband's death, and when the estate is ample, as in this case, to pay the arrears of alimony, I see no reason why this Court should not compel his executors to pay his debt. It has been argued that if a deceased husband is insolvent, section 10 of the Judicature Act, 1875, made the rule in bankruptcy applicable to the administration of this estate, and that it would be strange if a different rule applied when the estate was solvent. This is not the case of an insolvent husband's liability for arrears of alimony. Such a case may arise thereafter, and will then have to be dealt with by the courts, but it is not the case here. In my opinion, there is here clearly a debt, and there must accordingly be an order for payment of the arrears. But following the practice of the Probate Division, such payment must not exceed the amount of one year's arrears. The decision in *Re Harrington* (1908, 2 Ch. 687) which was quoted to me as to arrears under a bastardy order is not applicable.—COUNSEL, *Dighton Pollock; Owen Thompson; J. P. W. Galbraith.* SOLICITORS, *Bell, Brodrick, & Gray; White & Co.*

[Reported by L. M. MAY, Barrister-at-Law.]

Probate, Divorce, and Admiralty Division.

ROBERTS v. ROBERTS & LANG (The King's Proctor shewing Cause). Bargrave Deane, J. 21st February.

DIVORCE—PETITIONER SUING AS POOR PERSON—DECREE NISI RESCINDED—COSTS OF KING'S PROCTOR'S INTERVENTION—R.S.C., ORD. XVI., R. 29.

A petitioner who sues for divorce as a poor person and obtains a decree nisi, *may, if the decree* nisi *is afterwards rescinded, be ordered to pay the costs of the King's Proctor's intervention.*

This was a motion on behalf of the King's Proctor to rescind a decree *nisi* pronounced on 6th July, 1915. No opposition was raised to the rescission of the decree, but counsel for the petitioner, who appeared on the motion, submitted that the petitioner ought not to be ordered to pay the costs of the King's Proctor's intervention. He had been admitted as a poor person, under order 16 of the Rules of the Supreme Court, for the purpose of presenting his petition for divorce, and rule 29 of that order provided: "When a person is applying or is admitted to take or defend or be a party to any legal proceedings as a poor person, he shall not be liable for any court fees or fees on taxation of costs, nor, unless the court shall otherwise order, to pay costs to any other party, except as provided by the rules of this order."

BARGRAVE DEANE, J.—This man has not been admitted as a poor person for the purposes of this intervention, which is a different pro-

ceeding from the original petition. He has tried to obtain a decree contrary to the justice of the case. The decree *nisi* will be rescinded and the petition dismissed, and the petitioner condemned in the costs of the King's Proctor.—COUNSEL, *D. Cotes-Preedy*, for the King's Proctor; *Comyns Carr*, for the petitioner. SOLICITORS, *The King's Proctor; William M. Pyke.*

[Reported by CLIFFORD MORTIMER, Barrister-at-Law.]

CASES OF LAST SITTINGS.

King's Bench Division.

RUOFF v. LONG & CO. Avory and Lush, JJ. 2nd and 3rd November.

NEGLIGENCE—STEAM LORRY LEFT UNATTENDED ON HIGHWAY—INTERVENTION OF THIRD PERSON—PROXIMATE CAUSE OF ACCIDENT.

The defendants' servants left a steam lorry unattended in a highway, having previously put it out of gear. In order to start the lorry it was necessary to remove a safety pin and to manipulate three levers. Two soldiers who were passing climbed on to the lorry and tried to start it. The first one failed, but the second one succeeded in starting it backwards, with the result that it ran into the plaintiff's shop. In an action to recover damages,

Held, that the defendants' servants were not negligent in leaving the lorry in this condition, and, even assuming that they were negligent, that negligence was not the proximate cause of the accident.

Appeal from the county court of Hampshire, holden at Portsmouth. The defendants were the owners of a Foden steam lorry, which they had sent in the charge of three of their servants to deliver beer at various public-houses in Portsmouth. While the beer was being delivered at the "North Pole" public-house, all three men got off the lorry and left it for a few minutes unattended. Before leaving it they had put the engine out of gear, so that in order to start it four distinct operations were necessary: a safety pin had to be removed, and the gear, reversing and starting levers had to be manipulated. While the lorry was standing in this condition two soldiers who were passing climbed on to it and endeavoured to start the engine. The first was unsuccessful, but the second soldier eventually managed to start it backwards, so that it ran into the plaintiff's shop, causing damage. In an action in the county court to recover damages for the negligence of the defendants' servants, the county court judge gave judgment for the plaintiff. The defendants appealed. For the defendants it was contended that their servants were not negligent in leaving the engine as they did; it could not start without the pin and the three levers being moved, and no reasonable man would anticipate that anyone would manipulate the levers and start the engine. Further, if it was negligence to leave the lorry unattended, that negligence was not the effective or proximate cause of the accident, but "the conscious act of another volition," against which no precaution could avail: *Dominion Natural Gas Co. (Limited)* v. *Collins & Perkins* (1909, A. C. 640). It was contended for the plaintiff that the owner of a thing which might cause injury to others had a duty to be careful in his user of it, and must take precautions to prevent mischievous and malicious persons interfering with it. If they did not take reasonable precautions they could not escape liability by saying that the damage was caused by the intervention of a mischievous person. It was a question of fact in each case as to the precautions which a reasonable man ought to take; here the county court judge had found that question in the plaintiff's favour.

AVORY, J.—Two questions have to be determined: first, whether there was any evidence of negligence on the part of the defendants; secondly, whether there was any evidence that the negligence (if any) was the effective or proximate cause of the damage suffered by the plaintiff. The plaintiff must establish that it was negligence on the part of the defendants' servants to leave this machine unattended in the public highway. In my judgment, the facts in this case do not afford any evidence of such negligence. It is totally different to the case of a horse being left unattended in the street, as a horse, however quiet, may start of its own accord. It is impossible to say that a person who leaves unattended a machine which will not start unless interfered with intentionally is guilty of negligence. Further, assuming that such conduct amounts to negligence, was that negligence the effective or proximate cause of the accident? To answer that question we have to determine whether, admitting that the accident would not have happened but for the intervention of the soldiers, such an intervention was a thing which the defendants, as reasonable men, ought to have anticipated. If it was, it is not a sufficient answer for the defendants to say that it was not their original act which caused the accident; the intervention is merely a link in the chain of causation, and they are responsible. In my opinion, however, it cannot be said that any reasonable man ought to have anticipated that the soldiers would manipulate these levers and so start the engine; there was no evidence on which any court could come to the conclusion that this accident ought to have been anticipated. This is not a case of a dangerous thing being left lying about so that injury was likely to arise from interference with it; a machine which can only be moved after a series of complicated operations cannot be described as "dangerous." Then it was said that it is a question of fact whether a reasonable man ought to have anticipated the intervention which ultimately caused the damage. Following the decision of the Court of Appeal in *Wheeler* v. *Morris* (84 L. J. K. B. 1435), however, we ought to hold that the finding of the county court judge, if we take it as a finding of fact, cannot stand if in our view there is no evidence to support it. It is not necessary to discuss the question whether, there being an initial act of negligence, the intervention of a third person of full age which is the proximate cause of the accident is an answer to an action. The cases of *Dominion Natural Gas Co.* v. *Collins* (1909, A. C. 640) and *Rickards* v. *Lothian* (1913, A. C. 263) are authorities in favour of the view that it would be an answer. Here, however, there was no initial act of negligence, and the defendants are therefore not liable.

LUSH, J.—If this motor lorry could be properly described as a dangerous thing, then the defendants, if they had placed it on the highway, would be taken to contemplate that persons lawfully using the highway might remove it; and if in the course of moving it these persons caused damage to a third person, the defendants, who originally caused the obstruction, would be liable. The defendants would have committed an unlawful act, and could not say that, because there was an intervening act of a third person, there was no connection between the original act and the accident. There would be a connecting link, and the chain of causality would be unbroken because the person who obstructs a highway must anticipate that persons hindered in their use of the highway will remove the obstruction. In the present case it could not be said that the defendants in leaving the lorry, which could not start of itself, in the street, had placed a dangerous thing or an obstruction on the highway, or had done anything unlawful. The only duty of the defendants was to take reasonable means to prevent such mischief as they ought to have contemplated as likely to arise from their act. There was no evidence to support a finding that this accident was likely to arise from their act. There would have been no danger but for the mischievous intervention of these two soldiers. It may be difficult sometimes to say whether in the circumstances a fresh, independent act has interrupted liability for an initial act of negligence leading to subsequent injury. But that question does not arise here, because there was no evidence to support a finding that the defendants' servants committed any initial act of negligence or failed to exercise reasonable care towards the plaintiff, and there is no evidence that, assuming they were negligent, the negligence was a proximate cause of the injury. Appeal allowed.—COUNSEL, *S. H. Emanuel*, for the appellants; *H. du Parcq*, for the respondent. SOLICITORS, for appellants, *Barlow, Barlow, & Lyde*, for *Lamport, Bassitt, & Hiscock*, Southampton; for respondent, *Edgar Beckervaise*, Portsmouth.

[Reported by L. H. BARNES, Barrister-at-Law.]

New Orders, &c

Supreme Court of Judicature.

RULES OF THE SUPREME COURT.

1. Rule 2 (*a*) of the Rules of the Supreme Court dated 18th December, 1914, shall be amended by adding Bristol to the excepted towns therein mentioned and the whole of Rule 2 of the said Rules as so amended shall be incorporated in Order XXXVI. of the Rules of the Supreme Court 1883 as Rule I.B of that Order.

2. Order XXXVI., Rule 22B, is hereby annulled and the following Rule shall stand in lieu thereof:—

> After notice of trial has been given of any cause, matter, or issue to be tried elsewhere than in London or Middlesex, Manchester, Liverpool, and such other places as the Lord Chancellor shall from time to time direct, either party may, at any time, in the case of Leeds, Birmingham, Bristol, Cardiff, and Swansea, not less than seven days, and in all other places (except as hereinbefore excepted) not less than twenty-one days before the day proposed for the Commission day at such place in the Order in Council on that subject in force for the time being enter the trial at the next Assizes in the District Registry (if any) of the city or town where the trial is to be had or with the Associate. No later entry shall be allowed, except by leave of a Judge going that Circuit, or by order of a Judge at Chambers, subject to the consent of a Judge going that Circuit.

3. These Rules may be cited as the Rules of the Supreme Court, January, 1916.

4. These Rules are declared urgent within the meaning of the Rules Publication Act, and shall come into operation forthwith.

Dated the 31st January, 1916.

(Signed) BUCKMASTER, C.
READING, C.J.
COZENS-HARDY, M.R.
S. T. EVANS, P.
W. PICKFORD, L.J.
R. M. BRAY, J.
T. E. SCRUTTON, J.
CHAS. H. SARGANT, J.
P. OGDEN LAWRENCE.
HENRY A. MCCARDIE.
WM. H. WINTERBOTHAM.
C. H. MORTON.

War Orders and Proclamations, &c.

The *London Gazette* of 25th February contains the following :—

1. An Order in Council, dated 23rd February, further amending the Proclamation of 28th July, 1915, prohibiting the exportation from the United Kingdom of certain articles to certain or all destinations. It includes an extension of definition of pig-iron which is prohibited to all destinations.

2. A Treasury Order, dated 24th February, under section 13 (5) of the Finance (No. 2) Act, 1915, exempting from import duty on the ground of their small value the following articles :—

The following accessories of motor-cars, that is to say, engineers' hand-tools.

The following musical instruments, that is to say—

(1) Mouth organs.

(2) All complete musical instruments the value of which does not exceed one shilling.

3. Appointments, dated 24th February, of Appeal Tribunals under the Military Service Act, 1916, for the following counties and county boroughs (the figures give the number of members) :—Berkshire, including Reading (9); Carmarthen (10); Cornwall (13); Derby, including Derby (9); Durham, including Darlington, Gateshead, South Shields, Sunderland, and West Hartlepool (10); Gloucester, including Bristol and Gloucester (23); Middlesex (10); Nottingham, including Nottingham (9); Salop and Hereford (14); Stafford, including Burton-on-Trent, Smethwick, Stoke-on-Trent, Walsall, West Bromwich, and Wolverhampton (22); Surrey, including Croydon (18).

4. A Notice that the Orders have been made by the Board of Trade under the Trading with the Enemy Amendment Act, 1916, requiring eleven named businesses to be wound up.

5. An Order of the Central Control Board (Liquor Traffic), dated 23rd February, substituting for the Article entitled "Dilution of Spirits" in the existing Orders the following :—

The sale of whisky, brandy and rum reduced to a number of degrees under proof which falls between 25 and 50, and of gin reduced to a number of degrees under proof which falls between 35 and 50, is hereby permitted, and accordingly, in determining whether an offence has been committed under the Sale of Food and Drugs Acts by selling to the prejudice of the purchaser whisky, brandy, rum or gin not adulterated otherwise than by the admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than 50 degrees under proof.

6. An Admiralty Notice to Mariners, dated 22nd February (No. 206 of the year 1916), that new editions of Admiralty charts Nos. 973, 871, 1967 and 30 have been published, showing new cables and prohibited anchorages within the limits of the dockyard ports of Plymouth and Devonport, in accordance with Clause 14 of the First Schedule of Order in Council dated 14th day of October, 1915.

The *London Gazette* for 29th February contains the following :—

7. A Proclamation, dated 29th February (printed below), under the Trading with the Enemy (Extension of Powers) Act, 1915.

8. An Order in Council, dated 29th February (printed below), varying, for the purpose of the "Statutory List," the provisions of the Trading with the Enemy Acts.

9. An Order in Council, dated 29th February, consolidating the seven existing Aliens Restriction Orders.

10. An Order in Council, dated 29th February, extending the Military Service Act, 1916, with certain adaptations, to the Isle of Man.

11. An Order in Council, dated 29th February (printed below), further postponing the commencement of the Government of Ireland Act, 1914.

12. An Order in Council, dated 29th February, fixing minimum pensions and gratuities for Naval, Marine, and Reserve Officers wounded or injured during the period of the war.

13. An Order in Council, dated 29th February, fixing the pensions and gratuities to officers incapacitated for further service owing to ill-health, wounds, injuries, &c., attributable to, or developed by, war service.

14. An Order in Council, dated 29th February, establishing revised regulations for pensions and compassionate and educational allowances to widows and children of His Majesty's Naval and Marine Forces.

15. An Order in Council, dated 29th February, under the Naval Prize Act, 1864, prescribing the division of Prize Bounty.

16. A Foreign Office Notice, dated 29th February, making additions to the lists of persons to whom articles to be exported to Siam may be consigned.

17. Appointments, dated 29th February, of Appeal Tribunals under the Military Service Act, 1916, for the following counties and county boroughs :—Buckingham (8); Cumberland, including Carlisle and Westmorland (20); Dorset (12); Kent, including Canterbury (16); County of London, including City of London (25); Norfolk, including Norwich and Great Yarmouth (15); Oxford, including County Borough of Oxford (10); Pembroke (11); Somerset, including Bath (17); Administrative County of East Sussex, including Brighton, Eastbourne, and Hastings (15); Administrative County of West Sussex (8); Warwick, including Birmingham and Coventry (18); Wiltshire (14); the area comprising the Administrative County of the East Riding of Yorkshire and Kingston-upon-Hull (16).

18. A notice that Orders have been made by the Board of Trade, under the Trading with the Enemy Act, 1916, requiring eight further named businesses be wound up.

19. An Admiralty Notice to Mariners, dated 28th February (No. 223 of the year 1916) cancelling No. 1148 of 1915, relating to England, South Coast, imposing restrictions on traffic, and including—

The Port of Newhaven is closed to all merchant vessels other than those employed on Government Service, and those which have previously obtained special permission to enter from the Divisional Naval Transport Officer, Newhaven.

A Proclamation

PROHIBITING TRADING WITH CERTAIN PERSONS, OR BODIES OF PERSONS, OF ENEMY NATIONALITY OR ENEMY ASSOCIATIONS.

[Recital of the Trading with the Enemy (Extension of Powers) Act, 1915.]

Now, therefore, &c., it is hereby declared as follows :—

1. All persons or bodies of persons, incorporated or unincorporated, resident, carrying on business, or being in the United Kingdom are hereby prohibited from trading with any of the persons or bodies of persons mentioned in the list hereunder written, which list, with such variations therein or additions thereto as may be made by any Order made by the Lords of the Council on the recommendation of a Secretary of State under the power in that behalf given by Section 1, sub-section (2) of the Trading with the Enemy (Extension of Powers) Act, 1915, shall be called, and is hereinafter referred to as, the "Statutory List."

2. For the purposes of this Proclamation a person shall be deemed to have traded with a person or body of persons mentioned in the Statutory List if he enters into any transaction or does any act with, to, on behalf of, or for the benefit of, any such person or body of persons which if entered into or done with, to, on behalf of, or for the benefit of, an enemy would be trading with the enemy, and accordingly Our Proclamation relating to Trading with the Enemy, of the ninth day of September, nineteen hundred and fourteen, as amended by any subsequent Proclamation, shall apply with respect to the persons or bodies of persons mentioned in the Statutory List as if for references in such Proclamations to enemies there were substituted references to the persons and bodies of persons mentioned in the Statutory List, and for references to the dates of the said Proclamations, and the outbreak of war, there were substituted references to the date of this Proclamation or in respect of any person or body of persons hereafter added to the Statutory List the date of the Order adding him or them to the Statutory List.

3. The provisions of the Trading with the Enemy Acts, 1914 to 1916, and of the Customs (War Powers) Acts, 1915 and 1916, and all other enactments relating to Trading with the Enemy, shall, subject to such exceptions and adaptations as are prescribed by Order in Council of even date herewith or as may be prescribed by any Order in Council hereafter to be issued, apply in respect of the persons and bodies of persons mentioned in the Statutory List, as if for references in such enactments to trading with the enemy there were substituted references to trading with the persons and bodies of persons mentioned in the Statutory List, and for references to enemies there were substituted references to the persons and bodies of persons mentioned in the Statutory List, and for references to offences under the Trading with the Enemy Acts, 1914 to 1916, or any of those Acts, there were substituted references to offences under the Trading with the Enemy (Extension of Powers) Act, 1915.

4. Nothing in this Proclamation shall be taken to prohibit :—

(a) Any person or body of persons, incorporated or unincorporated, resident, carrying on business, or being in the United Kingdom, who is engaged in any neutral country in the business of insurance from carrying on such business with or through the agency of any of the persons or bodies of persons mentioned in the Statutory List;

(b) Any person or body of persons, incorporated or unincorporated, resident, carrying on business, or being in the United Kingdom who is engaged in working any Railway or other service of Public Utility in any neutral country under any Charter, Grant, or Concession made by the Government of, or by any Provincial or Municipal Authority in, any such country from trading with any of the persons or bodies of persons mentioned in the Statutory List, so far only as is necessary to enable the person or body of persons engaged in working such Railway or other service of Public Utility to comply with or fulfil the obligations or conditions of the Charter, Grant, or Concession under which the working of the Railway or other service of Public Utility is carried on; or

(c) Any person or body of persons, incorporated or unincorporated, resident, carrying on business, or being in the United Kingdom from entering into any transaction or doing any act which shall be permitted by Our Licence or by any Licence given on Our behalf by a Secretary of State or by any person authorized in that behalf by a Secretary of State whether such Licence be specially granted to an individual or be announced as applying to classes of persons.

5. This Proclamation shall be called "The Trading with the Enemy (Neutral Countries) Proclamation, 1916."

[There follows a Statutory List of a large number of traders in Greece, Morocco, The Netherlands, Norway, Portugal, Portuguese East Africa, Spain and Sweden.]

29th February.

*NOTE.—Under the Trading with the Enemy Proclamations of 25 June and 10 November, 1915, all Proclamations relating to Trading with the Enemy apply to all persons or bodies of persons of enemy nationality, resident or carrying on business in Morocco or Portuguese East Africa, and consequently it is an offence to trade with any person or body of persons of enemy nationality resident or carrying on business in Morocco or Portuguese East Africa, even though such person or body of persons is not included by name in the above list, and the omission of the name of any such person or body of persons from such list is not an authority or licence to trade with such person or body of persons.

ORDER IN COUNCIL.

Trading with the Enemy.

Whereas by a Royal Proclamation, bearing even date herewith, called "The Trading with the Enemy (Neutral Countries) Proclamation, 1916," and issued under the provisions of the Trading with the Enemy (Extension of Powers) Act, 1915, it is declared that all persons or bodies of persons, incorporated or unincorporated, resident, carrying on business, or being in the United Kingdom are prohibited from trading with any of the persons or bodies of persons mentioned in the List in such Proclamation (which List is therein and herein called the Statutory List), and that the provisions of the Trading with the Enemy Acts, 1914 to 1916, and of the Customs (War Powers) Acts, 1915 and 1916, and all other enactments relating to trading with the enemy shall, subject to such exceptions and adaptations as are prescribed by Order in Council of even date therewith, meaning thereby this Order or as may be prescribed by any Order in Council hereafter to be issued, apply in respect of the persons and bodies of persons mentioned in the Statutory List as if for references in such enactments to trading with the enemy there were substituted references to trading with the persons and bodies of persons mentioned in the Statutory List and for references to enemies there were substituted references to the persons and bodies of persons mentioned in the Statutory List.

And whereas it is expedient to make such exceptions and adaptations in the provisions of the said Acts and enactments as are herein prescribed :—

Now, therefore, His Majesty, by virtue of the powers in this behalf by the Trading with the Enemy (Extension of Powers) Act, 1915, or otherwise vested in Him, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered as follows :—

1. The said Acts and enactments shall apply in respect of the persons and bodies of persons mentioned in the Statutory List as if for references therein to trading with the enemy there were substituted references to trading with the persons and bodies of persons mentioned in the Statutory List, and for references to enemies there were substituted references to those persons and bodies of persons, and for references to offences under the Trading with the Enemy Acts, 1914 to 1916, or any of those Acts, there were substituted references to offences under the Trading with the Enemy (Extension of Powers) Act, 1915, and subject to the following exceptions and adaptations, that is to say :—

A. In the application of the Trading with the Enemy Act, 1914 :—

For the reference in Section I. to the 4th day of August, 1914, shall be substituted a reference to the date of this Order, or in respect of any person or body of persons added to the Statutory List to the date of the Order adding him or them to the Statutory List.

B. In the application of the Trading with the Enemy Amendment Act, 1914 :—

(1) Sections 2, 3, 4, and 5 shall not apply.

(2) For the references in Section 6 to the commencement of the present War, and to the 19th day of November, 1914, wherever such expressions respectively occur, shall be substituted references to the date of this Order, or in respect of any person or body of persons added to the Statutory List to the date of the Order adding him or them to the Statutory List.

(3) For the reference in Section 7 to the commencement of the present War shall be substituted a reference to the date of this Order, or in respect of any person or body of persons added to the Statutory List to the date of the Order adding him or them to the Statutory List.

(4) For the reference in Section 8 to the passing of the Act shall be substituted a reference to the date of this Order, or in respect of any person or body of persons added to the Statutory List to the date of the Order adding him or them to the Statutory List, and for the reference to hereafter in that Section shall be substituted a reference to after the date of this Order, or in respect of any person or body of persons added to the Statutory List to after the date of the Order adding him or them to the Statutory List.

(5) For the reference in Section 10 to the 4th day of August, 1914, shall be substituted a reference to the date of this Order, or in respect of any person or body of persons added to the Statutory List to the date of the Order adding him or them to the Statutory List.

C. The Trading with the Enemy Amendment Act, 1915, shall not apply.

D. In the application of the Customs (War Powers) (No. 2) Act, 1915 :—

The reference in Section 1 to the law relating to trading with the enemy shall be deemed to include a reference to the Trading with the Enemy (Extension of Powers) Act, 1915.

E. In the application of the Customs (War Powers) Act, 1916 :—

The reference in Section 1 to contravention of the law relating to trading with the enemy shall be deemed to include a reference to contravention of the Trading with the Enemy (Extension of Powers) Act, 1915.

29th February.

ORDER IN COUNCIL.

Government of Ireland Act, 1914.

Whereas it is enacted by the Suspensory Act, 1914, that notwithstanding anything in the Government of Ireland Act, 1914, no steps shall be taken to put that Act into operation until the expiration of twelve months from the date of the passing of that Act, or, if at the expiration of those twelve months the present War has not ended, until such later date (not being later than the end of the present War) as may be fixed by His Majesty by Order in Council; and that the provisions of that Act shall have effect accordingly.

And whereas by Order in Council dated the 14th day of September, 1915, His Majesty was pleased to order that no steps shall be taken to put the Government of Ireland Act, 1914, into operation until the expiration of eighteen months from the date of the passing of that Act, unless the present War had previously ended, nor if at the expiration of those eighteen months the present War has not ended until such later date, not being later than the end of the present War, as may hereafter be fixed by Order in Council:

And whereas it is expedient to extend the time mentioned in the said Order:

Now, therefore, His Majesty is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, that—

No steps shall be taken to put the Government of Ireland Act, 1914, into operation until the expiration of a period of six months after the termination of the eighteen months mentioned in the recited Order, unless the present War has previously ended, nor, if at the expiration of that period the present War has not ended, until such later date, not being later than the end of the present War, as may hereafter be fixed by Order in Council.

29th February.

Munition Workers.

The Minister of Munitions has issued new rules, entitled the Munitions (Leaving Certificates) Rules, which define the position of employers and work people, modified as from February 28 next, in respect of the leaving certificates required by workmen engaged upon munitions work in certain classes of establishments.

The principal changes relate to cases in which workmen are dismissed, discharged, or suspended for more than two days without an opportunity of earning, or leave on account of conduct on the part of an employer or his agent which would justify the termination of a contract of service. Employers must grant leaving certificates in such cases, and a workman may recover damages if he fails to do so. One week's notice, or wages in lieu of notice, has also to be given by employers in certain circumstances.

The Ministry of Munitions is preparing two explanatory memoranda on the subject of leaving certificates for the guidance of employers and

workpeople. Copies of these, as well as of the rules, will shortly be obtainable, free of charge, from the Ministry of Munitions, 6, Whitehall-gardens, S.W., or any labour exchange.

Trading with the Enemy.

HOSTILE FIRMS IN NEUTRAL COUNTRIES.

The Controller of the Foreign Trade Department desires to call the attention of houses engaged in foreign trade to the Royal Proclamation printed above, containing a statutory list of firms of enemy nationality or association with whom all dealings by persons carrying on business in this country are prohibited.

This list will be supplemented and revised from time to time. Transactions with persons on the statutory list are prohibited, subject to the same penalties as transactions with firms in enemy countries, except in cases where a general or special licence has been granted, permitting the transaction. Any application for a licence should be addressed to the Controller, Foreign Trade Department, Lancaster House, St. James's, S.W.

In making application for licences it is requested that the following particulars may be given in each case :—

(1) The name and address of the applicant.
(2) The name and address of the buyer.
(3) The date of the order of the goods.
(4) The nature of the goods in question.
(5) The prospective date and port of shipment; if ready for shipment, marks and numbers should be given, and the name of the actual consignee.
(6) Whether the goods are season's goods, and if so when the season for them begins.
(7) All other current orders from the same buyer.

The envelope should be marked "Application for licence."

Cameroon Blockade Raised.

It is officially announced that the blockade of the coast of German Cameroon was completely raised at midnight last night.

[The conquest of Cameroon was reported by General Dobell on 16th February, and two days later the last German garrison at Mora surrendered.]

Death Certificates of Soldiers.

The War Office announces that death certificates are issued free of charge in the case of officers as well as n.c.o.'s and men killed in action or dying as the result of active service. Applications in the case of fallen officers should, however, be addressed to the Secretary, War Office, Whitehall, London, S.W.; applications regarding warrant officers, n.c.o.'s and men only should be sent to Park-buildings, St. James's Park, London, S.W.

Societies.

The Solicitors' Managing Clerks' Association.

On Tuesday evening a lecture on "Some Defects in Our Legal Procedure" was delivered by Master T. WILLES CHITTY to the members of the Association in the Inner Temple Hall. In the absence of Lord Justice PICKFORD through indisposition, the chair was taken by Mr. Justice ROWLATT. There was a large and appreciative audience.

The lecturer said that he would only have time to deal with a part of his subject, and he had selected a small number of interlocutory proceedings for consideration.

THE OBJECTS OF INTERLOCUTORY PROCEEDINGS.

The objects of interlocutory proceedings were, first, to prepare actions and other proceedings for trial, and next to carry into effect the judgments and orders of the courts and judges. As incidental to these two main objects, the objects were to get rid of unfounded claims, to give summary judgment, whether by default or under order 14 or otherwise, in all undefended actions, to clear away groundless defences, to ensure the effective trial of all disputed claims and defences on their merits with despatch and with as little expenditure as possible, to ascertain, limit, and define the real points at issue, and to present them to the Court for adjudication in a clear, crisp, and intelligible form. The objects should be to defeat mere technicality and sharp practice, to avoid surprise and concealment, and to ensure the decision of the points at issue on their merits. These interlocutory proceedings required rules to regulate them, which, though technical, should be expressed in clear and intelligible language, and should be consistent and kept up to date. The lecturer proposed to deal with some matters which required amendment, and incidentally to point out how far the High Court rules fell short of the standard indicated.

THE SUMMONS FOR DIRECTIONS.

The Summons for Directions was invented by Lord BOWEN, and first introduced in 1883, when it was suggested that pleadings might be abolished. At first it was optional, but by the rules of July, 1902, it was made compulsory. Its main object was to ensure that each action should at an early stage be brought before the Master, so that he might obtain some knowledge of it, and be able to direct the necessary proceedings. But, as now worked, it was, in the majority of cases, a complete failure. To accomplish its main object, practitioners who attended the summons must have some considerable acquaintance with their clients' cases, and this they did not have. What happened now was that the plaintiff's representative produced the writ, and said the action was for breach of contract, or as the case might be, and he knew nothing more about it, and the defendant's representative said he knew nothing except that he had had a letter that morning asking him to attend the summons. How could the Master, under the circumstances, deal with the various matters arising on the summons? The thing degenerated into a farce, and the summons was a useless waste of money and time. All these matters could be as effectively, and far less expensively, dealt with, as formerly, by rules regulating pleadings and other matters, and leaving it open to the plaintiff to select the mode and place of trial, subject to any application by the defendant. If it was desirable for the Master to intervene at an early stage, provision must be made requiring the representatives of the parties to be more fully instructed as to the facts and the contentions of their clients, and the costs of obtaining these instructions must be allowed. Personally, he thought a great deal might be done in this direction; the issues might be narrowed by admissions and otherwise, and much expense, in the way of pleadings, particulars, and so forth, saved. But it would require very careful consideration, and unless the Rule Committee would undertake this, he suggested that the compulsory summons for directions should be abolished, and that we should go back to the old plan of having stereotyped directions embodied in the rules, thus effecting a great saving of time and money. There were some 36,000 of those summonses issued each year in the Central Office alone, so the matter was not without importance. Moreover, as regards the mode of trial the rules were in a chaotic condition. This was shewn by a comparison of ord. 36, rr. 2, 6, 7a, with the direction in order 30, that the Master was to fix the place and mode of trial on the summons for directions. These rules were obviously inconsistent, and the confusion was made worse by the additions made in 1908 to order 54 (r. 32), under which it was necessary to direct the mode and place of trial on the first hearing of the summons for directions—at a time when probably neither party was in a position to say what was the proper place or mode of trial. A proviso was introduced allowing subsequent alteration, but strictly this was rendered unworkable by the decision of the Court of Appeal in *Kelsey* v. *Donne* (1912, 2 K. B. 482). The rule in question stood amongst some twelve rules, of which about eleven were quite obsolete. As regards the place of trial the difficulty had been considerably increased by the rules of December, 1914, as amended in January, 1916. Save in the case of certain large towns, where there was, in the Master's opinion, a *primâ facie* case for sending an action to a particular assize town, he must refer the case to the Assize Judge who was going to that town. But this involved finding out who that judge was and where he was, and also endeavouring to catch him there, and perhaps after following a Judge about and instructing agents and possibly counsel, you might fail to catch him at all. Just consider the delay and expense and inconvenience involved in all this. The idea was to enable the Judge to control the circuit work, but it was doubtful whether the rule effected this purpose, and whether it was not better to put up with some possible inconvenience on circuit than to put the parties to the certainty of great inconvenience, expense and delay. It should also be possible, in cases where the parties lived at a considerable distance from each other to fix the place of trial in Middlesex or some intermediate place. But this the Master, as a recent experience shewed, could not do. Moreover, the rules as to notice of trial and entry for trial allowed far too much delay.

COUNTY COURTS.

The next matter the lecturer wished to refer to related to the county courts. We wanted a more easy and efficient interchange between the high court and the county court. He did not propose to touch the larger question of amalgamation, which some, he hoped, would live to see, but to confine himself to one or two points of daily occurrence at chambers. In many actions the subject matter in dispute was reduced to a very small amount, often much less than £100. There should be power to send all such actions, at any rate if either party desired it, to the county court or a Master for trial. Section 65 of the County Courts Act, 1888, allowed remitter to the county court where a claim exceeding £100 had been reduced by payment or otherwise to a sum not exceeding £100; but it had been held that "payment" did not include payment or other reduction after action brought. And the lecturer mentioned other cases where a claim, although small, could not be remitted, even though both parties consented. Amendments in this respect had been embodied in some County Court Bills, but had been lost through being joined with contentious matters. Then as to costs, those up to remitter should, under section 65, be allowed on the Supreme Court scale; but section 116 forbade, in certain cases, more than county court costs, unless certified by a judge of the High Court. It had been held, however, that a High Court judge could not certify after remitter, with the result that the plaintiff in remitted actions could not get High Court costs up to the time of remitter. Another curious result of section 116 was (see *Cox* v. *Hill*, 67 L. T. 26, and *Haycocks* v. *Mulholland*, 1904, 1 K. B. 145) that a Master could not certify for High Court costs,

though where a matter had been by consent referred to him he could deal with the merits and the costs of the reference.

ORDER 14.

There was a tendency in high quarters to regard order 14 with some disfavour, but the lecturer ventured to say that the procedure for summary judgment under this order was one of the real and beneficial reforms introduced by the Judicature Acts. In one year—1914—no less than 8,277 order 14 summonses were issued in the Central Office alone, and in these 5,128 judgments were ordered and 3,763 judgments signed, and the amount recovered or adjudged to be paid was £1,232,049, as compared with £385,000 recovered after trial. Unfortunately, it was only the bad cases—those where leave to defend had been wrongly refused—which ever got to the Court of Appeal or the House of Lords, and, consequently, the beneficial side of order 14 did not come before those tribunals. Hence the tendency to require a very technical compliance with the rules, as in *Lagos* v. *Grimwaldt* (1910, 1 K. B. 41). He suggested that the beneficial effect of the order should be extended by removing technicalities. Moreover, even where the defendant made statements in his affidavit which entitled him to leave to defend, it was usually only to gain time, and if means existed by which cases could be immediately set down for trial, a large proportion would be immediately settled. Ord. 14, r. 8 (*b*), provided for a special list, which unfortunately got to be called the "Short Cause List." It would be better to have a "Speedy Trial List," into which might be put actions which ought to be tried at once. In a few cases a mistake would be made, and the action fought out at length; but in a large proportion of cases this would compel the defendant to abandon his bogus defence or come to a settlement. And, in any case, there should be longer notice of the days on which the Short Cause List would be taken, and of the cases to be taken on a particular day.

PLEADINGS.

As to pleadings, the rules and the forms were framed on different systems, and were contradictory, and the position of a counterclaim was still unsettled and gave rise to difficulties. The earlier doctrine—that a counterclaim was different from a set-off, and was an independent action—had had doubt thrown on it by Channell, J., in *Bankes* v. *Jarvis* (1903, 1 K. B. 549), and this gave rise to several practical difficulties, such as the proper mode of dealing with a counterclaim when it was set up in answer to an otherwise admitted claim under order 14.

PARTICULARS AND DISCOVERY.

As to particulars, either party should in the first instance apply for them by letter, and provision should be made for the costs of the letter. As to discovery, lists of documents should be furnished, and an affidavit only required when the party was not satisfied with his opponent's list. Moreover, ord. 31, r. 19 A. (3), as instanced by *White* v. *Spofford* (1901, 2 K. B. 241) was too narrow, and it should be possible to inquire for a particular class of documents which an opponent might have omitted to put in his affidavit, sometimes quite honestly because he took an erroneous view as to their being relevant. The rules as to interrogatories were incongruous (compare ord. 31, rr. 1, 6, 7, 11), and they should have been resettled or annulled when leave to deliver interrogatories was first made necessary.

APPEALS TO THE COURT OF APPEAL.

Much expense and injustice might be avoided if there was a simple method of dealing with the question of final and interlocutory orders; if, for instance, it was left to an official to place an appeal in the appropriate list and his decision was binding.

REFORM OF THE RULES.

Committees, the lecturer said, had sat in 1908—to go no further back—and in 1912, and a Royal Commission on Delay in the King's Bench Division in 1914, and many of the matters suggested had been approved and recommended for a number of years, but they remained disregarded, and appeared likely to continue to do so. There were two chief reasons for this: one was the want of an efficient set of rules, well drafted, and systematically revised and kept up to date; the second was the want of an efficient tribunal to settle points of practice and procedure, whether by way of appeal, or to settle points arising in practice. The R.S.C. were last revised in 1883. They consisted originally of 1,045 rules. They had since been altered and amended by some 500 new rules. An examination of the rules showed that many were badly drafted; that some had misprints and errors; that many were obsolete; and that many were unnecessary; and the new rules were often inconsistent with the old ones. The County Court Rules were far better than those of the High Court. They were efficient, consistent, and up to date. That was because they were made by a small committee of county court judges, who were practically acquainted with their working, and were in immediate touch with the county court registrars. The committee sat regularly, and from time to time the County Court Rules were thoroughly revised and a new and complete set issued. This was done in 1875, 1886, 1903, and in 1914 a consolidation of the amendments since 1903 was published. What was wanted in the High Court was, immediately, a systematic revision, resettling, and rearrangement of all the existing rules, eliminating obsolete and unworkable rules, and redrafting others by the light of thirty-three years' experience, and bringing all up to date; and for the future, that the rules should be revised periodically and systematically. How were those objects to be effected? Without disrespect to the Rule Committee, the lecturer suggested that owing to its constitution and the conditions under which it worked, it was unable to deal with present requirements. The larger part of the rules related to practice at chambers and in the Central Office, and either the Rule Committee should be reconstituted so as to include more persons engaged in practice there, and who had time to attend to the work, with small practical sub-committees to attend to rules relating to particular departments, or, leaving the Rule Committee as at present constituted, an independent and subordinate "Chamber Rule Committee" should be formed, consisting of persons practically acquainted with the requirements at chambers and the Central Office, who would meet periodically and frame rules relating only to practice there; if thought necessary, submitting these rules to the Rule Committee. And, further, some authority or tribunal was required to settle the various and multitudinous points of practice which were constantly arising. Subject to appeal to the Court of Appeal, the decision of the judge at chambers ought to be authoritative and final. But the continual change of judges prevented continuity or consistency in the decisions. Nor were there any efficient means of recording the decisions of the judges at chambers and making them known and available to practitioners The remedy was to select a judge with regard to his special knowledge and practical acquaintance with the chamber practice; he should sit for a considerable period, and means should be found for recording decisions of importance, as was done when Field, J., sat in chambers after the rules of 1883 came into operation. But a better plan would be to appoint a special and permanent judge at chambers, selected for his special qualifications for the post. In addition, it would be desirable that there should be some authority for settling or giving directions as to minor points of practice; an extended and more definite power than that at present possessed by the Masters to give practice directions. All this might be done by a small committee, possibly the Chamber Rule Committee already suggested. This committee would have ample power and opportunity to consult managing clerks, court officials, solicitors, and the Bar. If anything the lecturer had said should advance by a single hour the period when some of these reforms would be carried out, he would be amply rewarded.

The meeting closed with votes of thanks to the lecturer, the chairman, and the Benchers of the Inner Temple, proposed by Mr. G. B. Elphick and seconded by Mr. John Verrall.

The Union Society of London.

The twelfth meeting of the 1915-16 session of the above society was held at the chambers of Mr. W. R. Willson, 3, Plowden-buildings, Temple, on Wednesday, 1st March, 1916, at 8 p.m. The President was in the chair. Mr. Coram moved: "That this house is of opinion that reprisals by air-raids on German territory are the most effective means of safeguarding the population of these islands against Zeppelin attacks." Mr. Geen opposed the motion. The following members also spoke:—Mr. Stevens, Mr. Roper, Mr. Thomas, Mr. Eustace, Mr. Kingham, Mr. Braddock, Mr. Willson, and Mr. Stranger. The motion was carried.

In the House of Commons, on the 24th ult., Sir E. Grey, in reply to Mr. Macmaster (U.), said:—The Contraband Committee consists of a chairman, who, as I have already stated, is my hon. and learned friend the member for Leamington; of Captain Longden, R.N., representing the Admiralty, assisted by Lieutenant Arnold-Forster, R.N.V.R.; one representative of the Foreign Office, Mr. G. S. Spicer; one representative of the Board of Trade and Customs, Mr. H. Booth; and one of the Procurator-General's Department, Mr. Shearman. Mr. Macmaster: Is the Contraband Committee under the jurisdiction of the new Minister of Blockade? Sir E. Grey: Certainly; the committee will continue to perform its functions in the same way, but, no doubt, its executive action will be supervised and co-ordinated with that of other branches by the new arrangement.

Sir Samuel Evans's Return.

The President (Sir Samuel Evans) took his seat in the Prize Court on Tuesday for the first time since his serious accident early in December. There was a large attendance of counsel and others to welcome his Lordship, who was able to walk to the Bench with the assistance of crutches.

The Attorney-General said that on behalf of the Bar generally, and still more on behalf of the Bar practising in that court, he desired to express the extreme pleasure with which they saw his Lordship return to his work in that Court with health at least partly restored. No branch of the King's courts since the war broke out had had more responsible and in modern times more novel functions to discharge than those which had fallen on his Lordship as Judge of the Prize Court. His Lordship's withdrawal had been a public misfortune, and on behalf of the Bar he asked his Lordship to accept their congratulations on his return.

The President said that he was greatly obliged to the Attorney-General for his very kind words, and to the members of the Bar for their sympathy. He was glad that he was back again in court, and if they were half as glad to have him back as he was to see them that was exactly as he would wish it to be. He was glad to think there had not been any real inconvenience or cost to the public in the matter of the Prize Court work owing to his enforced absence.

Companies.

The Legal and General Life Assurance Society.

29TH FEBRUARY, 1916.

At the annual general meeting of the Legal and General Life Assurance Society, held on the 29th inst., the report for 1915—being the seventy-ninth year since the establishment of the society—was submitted.

It was stated that 2,503 policies for £1,679,288 had been issued in the year, of which £65,094 had been re-assured, leaving £1,614,194 as the net new business. The gross new premiums were £102,920, or less re-assurances £99,541 net. The total net premium income amounted to £1,039,712. The total net claims on the life assurance fund amounted to £620,302, caused by 419 deaths and sixty-three endowment policies matured, and included the sum of £68,029 paid as bonus additions. The claims by death due to the war amounted to £166,322 7s. 2d. The claims on the general fund amounted to £15,074. The total funds had increased during the year by the sum of £516,782, and amounted to £10,927,311, yielding an average rate of £4 10s. 6d. per cent. interest gross.

It was stated that the assets included £5,064,271 invested on mortgage of real and personal property. These securities had been recently investigated by the directors, and the result of such investigation was satisfactory.

Existing life assurances, including bonus, amount to £34,009,943.

In the House of Commons, on the 24th ult., Mr. Asquith, answering Mr. Llewellyn Williams, said it was not considered desirable at the present time to make any alteration in the procedure of Courts-martial, which was simple and with which military officers were conversant. Whenever possible the services of officers with previous legal experience were and would be utilized to the fullest extent. No alteration of the law with regard to the right of appeal was contemplated.

Law Students' Journal.

Law Students' Society.

UNIVERSITY OF LONDON LAW STUDENTS' SOCIETY.—At a meeting held on Tuesday, 29th February, 1916, at University College (Mr. F. Bradbury in the chair), the subject for debate was: "That Public School Education is Detrimental to the National Interest." Mr. L. Messinesi opened in the affirmative, and Mr. P. A. Wood in the negative. The following members also spoke: Messrs. Parks, Padshah, Easty, Singh and Godwin. The leaders replied, and on the motion being put to the meeting it was carried by one vote.

Obituary.

Mr. John H. Edgar.

Lieutenant JOHN HAMMOND EDGAR, 9th Durham Light Infantry, reported killed in France, was the only son of the late Mr. R. S. Edgar, Bromore, co. Down, and Mrs. Edgar, of Clittonville-avenue, Belfast. He was educated at Queen's College, Belfast, and graduated M.A. and LL.B. in the Royal University of Ireland. He was called to the Irish Bar in 1904 and to the English Bar in the following year. In 1907 he went to Newcastle and was largely engaged in county court practice in the city and on Tyneside. He was a prominent oarsman, being a member of the Tyne Rowing Club. He was home about a fortnight ago, and returned to the trenches on 21st February.

Mr. Lister Drummond.

Mr. LISTER MAURICE DRUMMOND, the Metropolitan Police magistrate, died at 10, Hampstead-square, on Sunday, the 27th ult. He was the son of Maurice Drummond, C.B., by his wife, the Hon. Adelaide (*née* Lister), eldest daughter of the second Lord Ribblesdale.

Mr. Drummond was called to the Bar by the Inner Temple in 1879; he was secretary to the Evicted Tenants Commission, 1892; and for many years was one of the revising barristers on the South-Eastern Circuit. He was appointed Metropolitan Police magistrate in 1913. In 1875 he was received into the Roman Catholic Church, of which he became a notable and active member. In co-operation with Father Philip Fletcher he founded in 1887 the Guild of Our Lady of Ransom, and was created Knight of St. Gregory by Pope Leo XIII.

Mr. F. W. Englefield.

Mr. FREDERICK WILLIAM ENGLEFIELD died suddenly in London on Friday, the 25th ult. Mr. Englefield, who was admitted in 1880, was senior member of the firm of Pritchard, Englefield and Co., Clerk to the Painters' Company, with which he had been associated for many years, succeeding several members of his family, Registrar of Maidstone County Court, and secretary of the Incorporated Institute of British Decorators.

The interment took place at Norwood Cemetery on Tuesday, after a service conducted at the hall of the Painters' Company, Little Trinity-lane, by the Rev. Bernard J. Snell, Brixton Congregational Church. Those present included:—

Mr. W. A. D. Englefield (son) and Mrs. Englefield, Mr. Ronald Englefield and Mr. Rupert Englefield (sons), Commander C. N. Robinson and Mr. P. A. Jones (brothers-in-law); the following members of the Painters' Company:—Mr. C. J. Nicholson (Acting Master), Mr. H. S. Theobald (Warden), Mr. J. Campbell Cooper (Renter Warden),

Mr. W. Burton, Mr. M. C. Cowtan, Mr. T. M. Janes, Mr. S. Rome, Mr. W. A. Rome, Mr. R. Peachey, Mr. J. W. J. Kennedy, Captain F. Benham, Mr. O. Peall, Mr. W J. Cloake, Mr. A. E. Pridmore, Alderman C. C. Moore, Mr. J. D. Crace, and T. Macdonald Pritchard (Clerk to the Company); Sir James Linton, P.R.I., Mr. G. Hillyard Swinstead, R.I., Judge Parry, Mr. W. D. Pritchard (Registrar, Lambeth County Court), Mr. G. Pritchard (High Bailiff, Lambeth), Mr. A. Davidson (secretary, London Association of Master Decorators), and Mr. C. M. Treadwell (Registrar, Greenwich County Court).

Legal News.

Appointments.

Mr. THEOBALD MATHEW has been elected a Bencher of the Hon. Society of Lincoln's Inn, in succession to the late Right Hon. Sir A. R. Scoble, K.C.

Mr. JOHN B. JACKSON (a member of the firm of Messrs. R. S. Jackson, Bowles, & Jackson, of Ingram Court, 167, Fenchurch-street, London, E.C.) has been appointed a Commissioner for Oaths. Mr. Jackson was admitted in February, 1904.

Changes in Partnerships.

In consequence of the retirement of Mr. Lionel B. Mozley, the firm of Hicks, Arnold, & Mozley, of 35, King-street, Covent Garden, London, W.C., has been dissolved as from 26th February. A new firm has been constituted, the members of which are Mr. H. LEWIS ARNOLD, Dr. MONTAGUE BENDER, B.A., LL.D., Mr. BERTRAM W. ARNOLD, Mr. MONTIE P. ARNOLD, and Mr. A. LEWIS ARNOLD, who will practise conjointly at the above address, under the style of "Hicks, Arnold, & Bender." The three last-named gentlemen have been intimately associated with the practice of the late firm for many years past.

Dissolution.

PEREGRINE CHARLES COTTON FRANCIS, HENRY HEMING JOHNSON, HUGH DOUGLAS PEREGRINE FRANCIS, Solicitors (Francis & Johnson), 19, Great Winchester-street, in the city of London. Feb. 25. So far as concerns the said Henry Heming Johnson, who retires from the said firm. The said Peregrine Charles Cotton Francis and Hugh Douglas Peregrine Francis will continue the same business under the present style of Francis and Johnson. [*Gazette*, Feb. 25.

General.

The Legislature of Ontario was to meet on the 29th ult., and it was expected that early in the session the Government would announce their intention to submit the question of the prohibition of the liquor traffic to the people of the province. Unquestionably, says the Toronto correspondent of the *Times*, prohibition will be carried by a large majority.

A Reuter's message from Washington of 1st March says:—The British Embassy announces the establishment of a bureau to facilitate American commerce with Scandinavian countries. The bureau will inform American exporters whether the commodities they desire to ship come within the British regulations, and, if so, will issue certificates permitting their passage through the British naval control.

A Reuter message from Amsterdam of 26th February says:—According to a Berlin telegram, the Bill for the taxation of war profits has just been published. It provides for the taxation of all increases in the fortunes of single persons between the beginning of 1914 and the end of 1916, if exceeding £150. The rate of taxation ranges from 5 to 25 per cent. German companies will have to pay from 10 to 30 per cent., according to the excess profits made in this period. The taxes thus raised on excess profits will be increased by a further 10 to 50 per cent. if the average profit in the years of the war exceeds 10 per cent. of the company's capital. The taxation of foreign companies amounts to between 10 and 45 per cent. on excess profits. Besides the Bill for the taxation of war profits, the German Government intends to submit to the Reichstag a series of Bills dealing with fresh taxes, which are estimated to yield some £25,000,000.

In the House of Commons, on Tuesday, Mr. Herbert Samuel, answering a question by Mr. Ashley whether the Advisory Committee appointed by the Government to investigate the cases of British subjects imprisoned by the Home Secretary, without trial or any charge being made against them, had any power to insist on release if they considered innocence to be established, said:—The Committee have no occasion to insist on the release of the interned persons to whom reference is made. Their recommendations have invariably been acted upon. Replying to another inquiry by the same hon. member concerning the Committee, Mr. Herbert Samuel said:—The Committee was appointed by the Government, and could, no doubt, be dissolved by them; but the Defence of the Realm Regulation which deals with this matter provides that any representations which may be made by a person affected shall be duly considered by an Advisory Committee which shall be presided over by a person who holds or has held high judicial office. If there were no such Committee there could therefore be no internment orders.

I would add that there is no question of dissolving a Committee which has carried out its difficult work with such scrupulous regard both to the safety of the country and the rights of individuals. Mr. Ashley: Is this Committee any real curb on the right hon. gentleman's action? Mr. Herbert Samuel: I hope I do not require any curb. The Committee advise in cases referred to them, and all cases are referred, and their advice is always acted upon.

In the House of Commons, on Tuesday, Mr. Long, answering an inquiry by Mr. Roch whether, seeing that the married men who attested under Lord Derby's scheme would shortly be called up, he would consider the necessity of giving them a moratorium against rent and other necessary liabilities, said the Government were carefully considering the matter, but it was not possible to make any announcement at present. He hoped to do so very shortly.

The Property Mart

Forthcoming Auction Sale.

April 28.—Messrs. KNIGHT, FRANK & RUTLEY, at 20, Hanover-square, W.: Freehold Ground Rents (see advertisement, page iii, this week).

Messrs. H. E. FOSTER & CRANFIELD held their usual fortnightly sale of Reversions, Policies, &c., at the Mart, E.C., on Thursday last, when the total amount realised was £1,282 10s.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	EMERGENCY ROTA.	APPEAL COURT No. 1.	Mr. Justice NEVILLE.	Mr. Justice EVE.
Monday .. Mar. 6	Mr. Greswell	Mr. Synge	Mr. Farmer	Mr. Jolly
Tuesday 7	Bloxam	Church	Synge	Greswell
Wednesday .. 8	Jolly	Farmer	Bloxam	Borrer
Thursday 9	Borrer	Bloxam	Goldschmidt	Synge
Friday..... 10	Goldschmidt	Greswell	Leach	Farmer
Saturday 11	Leach	Jolly	Church	Bloxam

Date.	Mr. Justice SARGANT.	Mr. Justice ASTBURY.	Mr. Justice YOUNGER.	Mr. Justice PETERSON.
Monday .. Mar. 6	Mr. Bloxam	Mr. Church	Mr. Leach	Mr. Borrer
Tuesday 7	Jolly	Farmer	Goldschmidt	Leach
Wednesday .. 8	Synge	Goldschmidt	Church	Greswell
Thursday 9	Farmer	Leach	Greswell	Jolly
Friday..... 10	Church	Borrer	Jolly	Bloxam
Saturday 11	Goldschmidt	Greswell	Borrer	Synge

Creditors' Notices.

Under Estates in Chancery.

LAST DAY OF CLAIM.

London Gazette.—FRIDAY, Feb. 11.

SMERDON, GEORGE ALFRED, Old Town-st, Plymouth, Wholesale and Retail Tobacconist, Mar. 18 Smerdon v. Smerdon, Eve, J. Wilcocks, Saltash st, Plymouth

London Gazette.—FRIDAY, Feb. 18.

CREGEEN, EDITH JOSEPHINE CRELLIN, "Nirvana," Dorman's Park, Surrey Mar. 23 Letheby v. Christopher (Limited), Neville, J. Lumley & Lumley, Conduit st.

Bankruptcy Notices.

London Gazette.—FRIDAY, Feb. 18.

FIRST MEETINGS.

BARNSBY, JOSEPH NORTON, Walsall, Brown Saddler Feb 26 at 2 Off Rec, 30, Lichfield st, Wolverhampton
BUSH, FRANK, Fordingbridge, Southampton, Coal Dealer Feb 25 at 2 Off Rec, City chmbrs, Catherine st, Salisbury
BUTTERWORTH, THOMAS, Rochdale, Wood Machinist Mar 3 at 10.45 Town Hall, Rochdale
CARTWRIGHT, WALTER ROLAND, Pall Mall Feb 29 at 1 Bankruptcy bldgs, Carey st
COAT, JACOB JOHN, Southwark Bridge rd, Coffee House-Keeper Feb 29 at 11 Bankruptcy bldgs, Carey st
ELLIOTT, PHILIP, Bierley, York, Technical Chemist Feb 28 at 12 Off Rec, 12, Duke st, Bradford
GAYLER, GEORGE, Winchester, Milliner Feb 2 at 12 Off Rec, Midland Bank chmbrs, High st, Southampton
GRIFFITHS, FRED, Osborne ter, Clapham rd, Theatrical Manager Feb 28 at 12 Bankruptcy bldgs, Carey st
MASON, JOHN, Portland st, Lace Merchant Feb 28 at 11 Bankruptcy bldgs, Carey st
MORRIS, EDWARD, Torriano av, Kentish Town, Dairyman Feb 28 at 1 Bankruptcy bldgs, Carey st
POOLEY, RICHARD CHARLES MASON, Park rd, Clarence Gate, Physician Mar 1 at 11.30 Bankruptcy bldgs, Carey st
RICHARDSON, CHARLES, Sale, Cheshire, Baker Feb 25 at 3 Off Rec, Byrom st, Manchester
ROBERTS, LIONEL, Oxford st, Estate Agent Mar 1 at 12 Bankruptcy bldgs, Carey st
WILLIAMS, OWEN, Eglwysbach, Denbighshire, Farmer Feb 28 at 1.30 Eagles Hotel, Llanrwst
WADDINGTON, ARTHUR T, Whyteleafe, Surrey, Baker Feb 25 at 11 132, York rd, Westminster Bridge rd
WILLARD, CHARLES DUANE, Surrey st, Strand, Company Director Mar 1 at 11 Bankruptcy bldgs, Carey st
WILLIAMS, HUGH, Mountain Ash, Glam, Colliery Ripper Feb 29 at 11.30 Off Rec, St Catherine's chmbrs, St Catherine's st, Pontypridd

ADJUDICATIONS.

AUSTIN, ERNEST ALFRED, Crutched Friars, Manufacturers' Agent High Court Pet July 16 Ord Feb 14
BARNSBY, JOSEPH NORTON, Walsall, Brown Saddler Walsall Pet Feb 14 Ord Feb 14
BUSH, FRANK, Fordingbridge, Southampton, Coal Dealer Salisbury Pet Feb 15 Ord Feb 15
BUTTERWORTH, THOMAS, Rochdale, Wood Machinist Rochdale Pet Feb 15 Ord Feb 15
CANNON, WILLIAM THOMAS, Pinner, Middlx St Albans Pet Jan 3 Ord Feb 15
EVANS, JOHN, Swansea, Rabbit and Poultry Merchant Swansea Pet Feb 16 Ord Feb 16
HULME, WILLIAM, Preston, Butcher Blackburn Pet Feb 14 Ord Feb 14
KIMICH, ISOBEL, Hemel Hempstead St Albans Pet Jan 7 Ord Feb 16
LEPLA, JOS, Newmarket, Suffolk, Grocer Cambridge Pet Feb 16 Ord Feb 16
LEVIN, HANNAH, Liverpool Liverpool Pet Feb 15 Ord Feb 15
LUKE, CHARLES HENRY, Hillhead, Glasgow Manchester Pet Feb 15 Ord Feb 15
MORRIS, EDWARD, Torriano av, Kentish Town, Dairyman High Court Pet Feb 16 Ord Feb 16
PHILP, DUDLEY BURDETT, Boxhill on Sea, Skating Instructor Hastings Pet Jan 13 Ord Feb 16
REEVES, HENRY ALICK, Gloucester, Motorman Gloucester Pet Feb 16 Ord Feb 16
SOPER, HERBERT KEENS, Derby, Tailor Derby Pet Feb 8 Ord Feb 14
STACKWOOD, ARTHUR GEORGE, Aylsham, Norfolk, Carpenter Norwich Pet Feb 14 Ord Feb 14
SHORT, JOHN, Sirhowy, Tredegar, Mon, Fish Dealer Tredegar Pet Feb 14 Ord Feb 14
WILLIAMS, HUGH, Mountain Ash, Glam, Colliery Ripper Aberdare Pet Feb 15 Ord Feb 15
WOLSTENHOLME, JAMES, London Wall bldgs, Company Promoter High Court Pet Oct 12 Ord Feb 14

Amended Notice substituted for that published in the London Gazette of Jan 7:

SIMS, RHODA MATILDA MAY, Leicester Leicester Pet Dec 1 Jan 4

ADJUDICATIONS ANNULLED.

HOOPER, FREDERICK WILLIAM, Waltham Cross, Middlx, Machine Hand Edmonton Adj Sept 29, 1915 Annul Jan 22, 1916
BARRETT, ALFRED, Upper Greyshott, Surrey, Boarding House Keeper Guildford Adj Jan 30, 1895 Annul Feb 1, 1916

London Gazette.—TUESDAY, Feb. 22.

RECEIVING ORDERS.

CAMPBELL, WILLIAM HERBIES, Pantyfynnon, Carmarthenshire, Colliery Surfaceman Carmarthen Pet Feb 17 Ord Feb 17
COOKE, WALTER, Exmouth, Hairdresser Exeter Pet Feb 18 Ord Feb 18
COTTON, JAMES CHARLES, St Helens, Lancs, Chemist Liverpool Pet Feb 19 Ord Feb 19
DICKS, FREDERICK WILLIAM, Kettering Overlooker Northampton Pet Feb 19 Ord Feb 19
DUFFIELD, WILLIAM LANT, Tasburgh, Norfolk, Miller Norwich Pet Feb 19 Ord Feb 19
EASTON, DANIEL, Canterbury, Baker Canterbury Pet Feb 18 Ord Feb 18
GARBUTT, WILLIAM, Darlington, Hay Dealer Stockton on Tees Pet Feb 18 Ord Feb 18
HARPER, CHARLES JOHN, Halvergate, Norfolk, Builder Great Yarmouth Pet Feb 19 Ord Feb 19
HARRISON, SYDNEY DOUGLAS, Lidfield rd, Stoke Newington Bank Clerk High Court Pet Feb 18 Ord Feb 18
PULLEN, CHARLES WILLIAM, Cosham, Hants, Corn Merchant Portsmouth Pet Feb 3 Ord Feb 16
REELY, ALFRED GEORGE, Kingsthorpe, Northampton, Draper Northampton Pet Feb 19 Ord Feb 19
ROSSI, GIUSEPPE, Wallsend on Tyne, Tobacco Dealer Newcastle upon Tyne Pet Feb 14 Ord Feb 18
WEBB, CHARLES, Crawford st, Marylebone High Court Pet Jan 19 Ord Feb 17
WRIGHT, CHARLES, Luton, Beds Luton Pet Feb 18 Ord Feb 18
WYNTER, RICHARD, Morpeth mans, Journalist High Court Pet Sept 29 Ord Feb 17
ZAC, MICHEE, (a firm), Hanover ct, Hanover st High Court Pet Jan 12 Ord Feb 17

FIRST MEETINGS.

BINKS, ESTHER CATHERINE, Liverpool Feb 29 at 11 Off Rec, Union Marine bldgs, 11, Dale st, Liverpool
COLEMAN, ALFRED THOMAS, Brenchley, Kent, Licensed Victualler Mar 2 at 12 Off Rec, 12A, Marborough pl, Brighton
COOKE, WALTER, Exmouth, Hairdresser Mar 2 at 10.30 Off Rec, 9, Bedford cir, Exeter
DRINKWATER, ERNEST EDWARD, Holmer, Hereford, Florist Mar 2 at 12 2, Offa st, Hereford
HARRISON, SYDNEY DOUGLAS, Lidfield rd, Stoke Newington, Bank Clerk Mar 3 at 11 Bankruptcy bldgs, Carey st
LEE, GERALD DIXON, Church End, Finchley, Estate Agent Mar 3 at 11.30 14, Bedford row
SHORT, JOHN, Sirhowy, Tredegar, Mon, Fish Dealer Feb 29 at 11 Off Rec, 144, Commercial st, Newport, Mon
SMITH, BETSY, and ELIZABETH SMITH, Oldham, Grocers Mar 6 at 3 Off Rec, Greaves st, Oldham
SOPER, HERBERT KEENS, Derby, Tailor Feb 29 at 2.30 Off Rec, 12, St Peter's Churchyard, Derby
STACKWOOD, ARTHUR GEORGE, Aylsham, Norfolk, Carpenter Mar 1 at 12.30 Off Rec, 8, King st, Norwich
TAYLOR, WILLIAM, Higher Openshaw, Manchester, Painter Mar 1 at 3 Off Rec, Byrom st, Manchester
THOMPSON, EDWARD, Sunderland, Grocer Mar 2 at 2.30 Off Rec, 3, Manor pl, Sunderland
WEBB, CHARLES, Crawford st, Marylebone Mar 2 at 12 Bankruptcy bldgs, Carey st
WYNTER, RICHARD, Morpeth mans, Journalist Mar 2 at 11 Bankruptcy bldgs, Carey st
ZAC, MICHEE (a firm), Hanover ct, Hanover st Mar 1 at 12.30 Bankruptcy bldgs, Carey st